

A. 20 (B)

<p style="text-align: right;">Page 150</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 any point where the fact that the 2 billion was</p> <p>3 a number calculated by Barclays as opposed to</p> <p>4 Lehman was disclosed?</p> <p>5 A. My answer would be I would have</p> <p>6 thought the court would have assumed the</p> <p>7 purchaser would have made the calculation --</p> <p>8 Q. Of --</p> <p>9 A. -- of the 2 billion.</p> <p>10 Q. Would you have assumed the court would</p> <p>11 have thought that the purchaser made the</p> <p>12 calculation of the trade payable liability as</p> <p>13 well?</p> <p>14 A. I would have thought the purchaser</p> <p>15 would have thought there was a list of the</p> <p>16 vendor contracts.</p> <p>17 Q. Okay.</p> <p>18 A. I would have gotten a list, would have</p> <p>19 gotten a list, and the court would have assumed</p> <p>20 that a list had existed from Lehman.</p> <p>21 Q. So you would have assumed the court</p> <p>22 would have thought that the purchaser calculated</p> <p>23 the assumed liability for comp but that the</p> <p>24 assumed liability for cure came from a list that</p> <p>25 Lehman supplied?</p>	<p style="text-align: right;">Page 151</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. In my mind it's very clear. The cure</p> <p>3 payments are a list of contractual obligations.</p> <p>4 The pay process is a payment of a -- to a group</p> <p>5 of 9,000 folks in the future in very uncertain</p> <p>6 times and in, you know, in a very dramatic,</p> <p>7 large M&A transaction. So I'm very confident</p> <p>8 the court understood the distinction between the</p> <p>9 two.</p> <p>10 Q. When you're talking about the</p> <p>11 liability for the cure payment being subject to</p> <p>12 these very uncertain times, let's pursue that a</p> <p>13 little bit. Presumably there is an objective</p> <p>14 list of contracts that could be reviewed to get</p> <p>15 the number, correct, of what the cap, what the</p> <p>16 ceiling is of potential trade payables, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And is it your view that in these</p> <p>19 tumultuous times you're describing that that</p> <p>20 number could go up as a result of market forces?</p> <p>21 A. No.</p> <p>22 Q. It would go down from the cap,</p> <p>23 correct?</p> <p>24 A. Absolutely.</p> <p>25 Q. Okay. So if the amount accrued on</p>
<p style="text-align: right;">Page 152</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Lehman's books was X, then this market forces --</p> <p>3 these market force you're talking about would</p> <p>4 make the number less than X, correct?</p> <p>5 A. You're talking about the cure</p> <p>6 payments, just to clarify?</p> <p>7 Q. Correct. Yes.</p> <p>8 A. It's actually papered I believe right</p> <p>9 from the beginning of the transaction that</p> <p>10 Barclays had 60 days to walk through all of the</p> <p>11 vendor contracts, to the best of my</p> <p>12 recollection, and say which ones they intended</p> <p>13 they needed to run the businesses and they would</p> <p>14 honor those.</p> <p>15 It was very clear in terms of I think</p> <p>16 the -- from all the operators that this would be</p> <p>17 the basic course of business in this or any</p> <p>18 other transaction.</p> <p>19 Q. Okay. I'm not sure that goes to the</p> <p>20 question I asked. Let me try and rephrase the</p> <p>21 question a little bit. If you took the list of</p> <p>22 potential -- of contracts subject to that</p> <p>23 process where Barclays has the option of taking</p> <p>24 or leaving it?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 153</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. And you add them up, you're going to</p> <p>3 get a total number, right?</p> <p>4 A. Yes.</p> <p>5 Q. And the fact that Barclays can take or</p> <p>6 leave some of them will do nothing but reduce</p> <p>7 that number; it'll never increase it, right?</p> <p>8 A. That's correct.</p> <p>9 Q. And the fact that these market forces</p> <p>10 you're talking about may have an impact on the</p> <p>11 payables also will reduce the number; it won't</p> <p>12 increase it, correct?</p> <p>13 A. No, I would not describe the market</p> <p>14 forces have anything to do with it. These are</p> <p>15 contracts and these are inventories providing</p> <p>16 all sorts of different services, hundreds of</p> <p>17 different services. I would not describe the</p> <p>18 market having an impact on that.</p> <p>19 Q. The thing that would have the impact</p> <p>20 on the contract would be the amount Barclays</p> <p>21 would ultimately undertake?</p> <p>22 A. Would need to run its businesses.</p> <p>23 Q. With that in mind, sir, can you think</p> <p>24 of a reason why the accrual for liabilities on</p> <p>25 the trade payables would be an increased</p>

Page 154	Page 155
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 adjustment for the transaction?</p> <p>3 A. Would increase from the moment the</p> <p>4 transaction was done?</p> <p>5 Q. Would increase from the amount accrued</p> <p>6 on Lehman's books to a higher number for the</p> <p>7 purpose of the transaction?</p> <p>8 A. No, I would just be speculating. No,</p> <p>9 I can't think of a reason.</p> <p>10 Q. Because, in your view, the number can</p> <p>11 do nothing but go down from the amount, correct?</p> <p>12 A. Correct.</p> <p>13 Q. So you can think of no reason, can</p> <p>14 you, why the number would be written up?</p> <p>15 A. No.</p> <p>16 Q. Let me suggest a reason: Could it be</p> <p>17 written up so that the comp -- the cure assumed</p> <p>18 liability is a plug number to make sure that</p> <p>19 balance sheet balances?</p> <p>20 A. I don't have a comment on that.</p> <p>21 That's --</p> <p>22 Q. I'm afraid I'm going to have to ask</p> <p>23 you for one. Do you know -- was that the reason</p> <p>24 the number was what it was, to be a plug number</p> <p>25 on the balance sheet?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. That's a different question.</p> <p>3 No.</p> <p>4 Q. Did anybody ever discuss that fact</p> <p>5 with you?</p> <p>6 MR. BUCKLEY: That fact?</p> <p>7 Q. Withdrawn. Did anybody ever discuss</p> <p>8 with you the possibility of writing up that</p> <p>9 number to make that balance sheet balance?</p> <p>10 A. Absolutely not.</p> <p>11 Q. I'll go back to what I asked you about</p> <p>12 Mr. Kelly. Do you know if Mr. Kelly wrote that</p> <p>13 number up?</p> <p>14 A. No, I do not.</p> <p>15 Q. Do you know if Mr. Lowitt was involved</p> <p>16 in any writing up of that number?</p> <p>17 A. No, I do not.</p> <p>18 Q. Did you ever see any work product</p> <p>19 generated by Mr. Kelly or Mr. Lowitt indicating</p> <p>20 a write-up of that number by as much as a</p> <p>21 billion dollars?</p> <p>22 A. No, I did not.</p> <p>23 Q. If you had seen work product from</p> <p>24 Mr. Lowitt or Mr. Kelly writing that number up</p> <p>25 by a billion dollars, that would have been</p>
Page 156	Page 157
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 inconsistent with your view of what this number</p> <p>3 represented, would it not?</p> <p>4 MR. BUCKLEY: Objection. Would you</p> <p>5 repeat the question?</p> <p>6 No foundation.</p> <p>7 (Record read.)</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. And by "this number," I'm pointing at</p> <p>10 the number on Exhibit 19.</p> <p>11 A. 2.25.</p> <p>12 Q. We're in the same place on the</p> <p>13 document?</p> <p>14 A. Yes.</p> <p>15 Q. And if the comp accrual was not in</p> <p>16 fact a good faith estimate of the amount that</p> <p>17 Barclays would in fact pay for compensation,</p> <p>18 that would not be consistent with your view of</p> <p>19 what the financial schedule upon which the deal</p> <p>20 was based represented; isn't that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And you don't know, because it was</p> <p>23 Barclays model that resulted in that number,</p> <p>24 whether there was any writing up of that number</p> <p>25 beyond a good faith estimate of what Barclays</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 actually would pay; isn't that correct?</p> <p>3 A. I don't know.</p> <p>4 Q. In the deal as you understood it both</p> <p>5 on the Tuesday, September 16th, and as it closed</p> <p>6 on the 22nd, in between those two times, in your</p> <p>7 view, was there any embedded gain for Barclays</p> <p>8 contemplated in that deal on day one?</p> <p>9 A. No, there was not.</p> <p>10 Q. Did you come to learn that Barclays</p> <p>11 declared earnings that showed a gain on day one</p> <p>12 in the range of \$4 billion?</p> <p>13 A. I have come to learn that they</p> <p>14 reported their interim results that they</p> <p>15 reported a gain.</p> <p>16 Q. Mr. McDade, I have put before you what</p> <p>17 we previously had marked as Exhibit 22.</p> <p>18 Barclays Results Announcement Figures 2008,</p> <p>19 which was published in February of 2009, and I</p> <p>20 would direct your attention to page 95 of that</p> <p>21 fairly lengthy document.</p> <p>22 And in particular, sir, there's a</p> <p>23 description in note 11 starting on page 95 of</p> <p>24 the group's material acquisitions and it</p> <p>25 describes Lehman Brothers North American</p>

Page 158

1 HIGHLY CONFIDENTIAL - B. McDADE
2 businesses. Take the time you need, sir, to
3 read through it to familiarize yourself with it,
4 but my question, sir, is going to go to the
5 second to last paragraph, which reads, "The
6 excess of the fair value of net assets acquired
7 over consideration paid resulted in
8 \$2,262,000,000 of gains on acquisition," and the
9 number there is in sterling.

10 A. Uh-huh.

11 Q. Was that type of gain contemplated by
12 the deal you made with Barclays?

13 A. No, absolutely not. The type of risk
14 that they took on for this transaction
15 associated with the liabilities could have led
16 to a gain or a loss given the nature of the
17 markets. Absolutely not contemplated. I have
18 no knowledge of how their accounting works. I
19 have no knowledge of how they hedged and what
20 they did with the risk.

21 Q. The question actually revolves a bit
22 around the phrase "on acquisition" here. I'm
23 not talking about their sort of ultimate success
24 with the assets.

25 Was it contemplated there would be a

Page 159

1 HIGHLY CONFIDENTIAL - B. McDADE
2 gain upon acquisition?

3 A. No, it was not.

4 Q. Was it contemplated that the price
5 paid by Barclays would be less than the fair
6 value of the net assets acquired?

7 A. Absolutely not.

8 Q. And that's because at all points from
9 Tuesday, September 16, through the closing on
10 Monday, September 22, the deal was supposed to
11 be in balance, taking into account the changing
12 amount of securities that could be transferred;
13 is that right?

14 A. Those are your words.

15 Q. That's a question. Correct?

16 A. I'm sorry. No, from Monday all the
17 way through till the closing we, as Lehman, the
18 responsible parties at Lehman, worked to put a
19 transaction together, always valuing the assets
20 with all the current and relevant market
21 information that we had available to us with the
22 relevant experts.

23 Q. You were in court on Friday, the 19th,
24 for the sale hearing; is that correct?

25 A. That's correct.

Page 160

1 HIGHLY CONFIDENTIAL - B. McDADE

2 Q. Were you there for the entire hearing?

3 A. Yes, I was.

4 Q. So you were there from 4 or so when it
5 started till 20 minutes after midnight when it
6 ended?

7 A. That's correct.

8 Q. And you heard the deal described to
9 the court by the -- whoever got up and spoke,
10 you know, Mr. Miller, whatever lawyers got up
11 and spoke, you had a sense how the deal was
12 being described to Judge Peck, correct?

13 A. Yes.

14 Q. At any point in the description to
15 Judge Peck did you have an understanding that
16 the deal was described as anything other than a
17 wash, an equivalent exchange of assets?

18 A. The deal was described as a
19 transaction where the assets and liabilities
20 matched.

21 Q. Now, you mentioned before a
22 Clarification Letter that was put together after
23 the hearing, correct?

24 A. That's correct.

25 Q. And did you have any role in

Page 161

1 HIGHLY CONFIDENTIAL - B. McDADE
2 connection with putting that Clarification
3 Letter together?

4 A. Role with the actual creation of the
5 document, no.

6 Q. That's a good --

7 A. Role with certain aspects of it,
8 clarification of businesses that were
9 contemplated as part of being purchased or not,
10 yes.

11 Q. The role you have just described, did
12 that include any role in redefining the assets
13 that were to be transferred pursuant to the
14 transaction?

15 A. Redefining the assets?

16 Q. Let me make that question a bit
17 clearer.

18 A. Please.

19 Q. In the role that you played, did you
20 play any role in any change in the definition of
21 Purchased Assets as stated in the Asset Purchase
22 Agreement that we talked about before?

23 A. Well, for example, the original Asset
24 Purchase Agreement I'm fairly certain
25 contemplated purchase of Eagle Energy. I would

Page 162	Page 163
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 have been knowledgeable and part of the decision</p> <p>3 of that clarifying letter that excluded the</p> <p>4 Eagle commodity business and I think Lehman</p> <p>5 commodity services excluded as part of it. That</p> <p>6 would be an example of where I would have been</p> <p>7 involved.</p> <p>8 Q. Let me give you another example. Do</p> <p>9 you have any recollection of the definition of</p> <p>10 Purchased Assets changing from the description</p> <p>11 of a long position worth -- with a book value of</p> <p>12 approximately \$70 billion changing to the assets</p> <p>13 transferred in the repo plus the 15c3 assets you</p> <p>14 mentioned plus certain other unencumbered funds?</p> <p>15 A. Yes, I do.</p> <p>16 Q. When was that change made?</p> <p>17 A. The actual change made, the deal that</p> <p>18 was put together or the actual change for the</p> <p>19 clarifying letter?</p> <p>20 Q. Let's take both.</p> <p>21 A. The deal was put together over the</p> <p>22 course of the day on Friday, so that would be</p> <p>23 Friday, the 19th, and the letter, I'm not sure</p> <p>24 all the drafting, but over the course of the</p> <p>25 20th through the 22nd, I assume. The original</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 draft I guess started on the 20th.</p> <p>3 Q. Now, describe for me, if you would,</p> <p>4 how those changes came -- in the deal came to be</p> <p>5 made during the course of the day on Friday.</p> <p>6 I'll ask you for a general description and who</p> <p>7 was involved and then obviously I'm going to</p> <p>8 follow up on that.</p> <p>9 A. Sure. So with the changes in what</p> <p>10 Barclays' view of the assets that, after all the</p> <p>11 quantum changes, could be acquired, you know,</p> <p>12 there was a need for one clarification of just</p> <p>13 making sure they understood what assets could be</p> <p>14 acquired. After that, plus the valuation</p> <p>15 process of the teams that we've talked about and</p> <p>16 described, it became clear that they would</p> <p>17 insist on more value in terms of the</p> <p>18 transaction.</p> <p>19 Ian Lowitt, Alex Kirk, probably</p> <p>20 others -- I was not involved directly in much of</p> <p>21 the process -- started working on a couple of</p> <p>22 ideas that they had come up with in terms of</p> <p>23 places where there might be other assets that</p> <p>24 could be available to be contemplated as part of</p> <p>25 the purchase. So that's when we contemplated</p>
Page 164	Page 165
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 this concept of the 15c3 and that's when we</p> <p>3 started looking at the, what's called the</p> <p>4 clearance boxes for any unencumbered assets that</p> <p>5 could be made available.</p> <p>6 The process was a process that I</p> <p>7 believe included combination of Lehmanites and</p> <p>8 Barclays in terms of the general notion, and</p> <p>9 then specifically Ian and Martin and his team</p> <p>10 working -- and Paolo Tonucci working to find</p> <p>11 other assets that may be of value in terms of a</p> <p>12 purchaser.</p> <p>13 Q. Now, you said you were not part of</p> <p>14 the --</p> <p>15 A. I was part of it for a brief period of</p> <p>16 time in the morning.</p> <p>17 Q. Okay.</p> <p>18 A. Directing traffic to start, and then I</p> <p>19 left to go prepare for bankruptcy over at Weil</p> <p>20 Gotshal. So I was part of it for a brief period</p> <p>21 of time, not actual part of most of those</p> <p>22 meetings that took place.</p> <p>23 Q. Describe for me what you did when you</p> <p>24 were directing traffic to start.</p> <p>25 A. We understood that Barclays was</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 uncomfortable with the new aspect of what they</p> <p>3 now had in terms of market value that we and</p> <p>4 they had agreed upon. We had, in order to</p> <p>5 transact the deal, we had to find more in the</p> <p>6 way of ideas that would provide value.</p> <p>7 So we, as the Lehmanites, sat and</p> <p>8 tried to come up with a couple of different</p> <p>9 concepts that we had, both of which I've just</p> <p>10 mentioned to you, that might be of value, and I</p> <p>11 directed the team to go ascertain whether any of</p> <p>12 those were actual paths that we could take that</p> <p>13 could have a positive outcome.</p> <p>14 Q. And the team was Kirk, Lowitt --</p> <p>15 A. Kirk was really directing traffic.</p> <p>16 Lowitt was directing traffic in terms of, you</p> <p>17 know, facilitating the finance team's logistics</p> <p>18 on it, yes.</p> <p>19 Q. Kirk, Lowitt and Tonucci were the</p> <p>20 three main guys on that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, to whom did Barclays communicate</p> <p>23 its lack of comfort about the market value?</p> <p>24 A. The team, Michael Klein, Archie Cox,</p> <p>25 Rich Ricci, I believe Michael Keegan, who was</p>

Page 166

1 HIGHLY CONFIDENTIAL - B. McDADE
2 playing a significant risk role in the process
3 over the course of the week, described the
4 process around the asset valuation discomfort
5 to, I believe -- there were two sets of groups:
6 One, the Alex Kirks of the world and, two, the
7 different risk teams that we've talked about in
8 previous questions.

9 Q. Did Klein, Cox, Ricci and Keegan
10 describe this discomfort to you?

11 A. They -- to me, in a collective sense
12 to me, and Ian and Alex Kirk, yes, that's
13 correct.

14 Q. I'm not sure what you mean by "in a
15 collective sense." Were you present when they
16 communicated this?

17 A. Early in the morning, yes. Early
18 Friday morning.

19 Q. And there's a meeting on early Friday
20 morning?

21 A. We're sitting somewhere in one of
22 offices on the 31st floor.

23 Q. In this meeting on the 31st floor for
24 Barclays is Klein, Cox, Ricci and Keegan?

25 A. To the best of my recollection.

Page 168

1 HIGHLY CONFIDENTIAL - B. McDADE
2 believed that our process -- Mike Keegan spoke
3 and talked about some of the assets that now had
4 become part of the deal, part of the repo/part
5 of the deal, were different assets and he was
6 having a hard time finding the ability to value
7 those assets.

8 We spoke about trying to help get the
9 transparency and the information underlying some
10 of that collateral to them, which we set about a
11 process to do. That would have been Tonucci's
12 job. And then we just talked overall about the
13 other aspect of their view that the markets were
14 continuing to decline and their current view on
15 values as of that Friday morning, which would
16 have been the same process, just a fresh market
17 view from -- that we had been undertaking all
18 week.

19 Q. Now, the assets that Keegan spoke
20 about, did they include among his concerns that
21 there was now in the repo categories of assets
22 that had been excluded in the earlier part of
23 the week?

24 A. That's correct.

25 Q. Did Barclays say they no longer wanted

Page 167

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. And the Lehmanites in this meeting are
3 you, Kirk, Lowitt and Tonucci; is that right?

4 A. To the best of my recollection, it's
5 Lowitt. I don't recall whether Tonucci was
6 there.

7 Q. Do you recall if Kirk was there?

8 A. Yes, he was.

9 Q. Kirk was there because you had asked
10 him to come, right?

11 A. That's correct.

12 Q. The night before?

13 A. That's correct.

14 Q. As best you can recall, what precisely
15 did the Barclays people say and who said it
16 about the lack of comfort with market value?

17 A. Well, I think the -- I don't have a
18 recollection of who said what. It was -- you
19 know, I was there for a short period of time. I
20 don't have a specific recollection. They tended
21 to rely a lot on their advisor, Michael Klein,
22 but none of them were shy in terms of the
23 process.

24 So I don't know who spoke. The
25 content I believe of what was spoken to is we

Page 169

1 HIGHLY CONFIDENTIAL - B. McDADE
2 those previously excluded assets?

3 A. Keegan's whole line of thinking was I
4 just need to be able to value the assets. There
5 was never any, to my recollection, there was
6 never anything "we don't want any asset," "we
7 moved past the residentials," you know, none of
8 the earlier dynamic that we had in terms of the
9 constituent base of the assets.

10 So he needed information, he was
11 lacking information to be able to value those
12 both from a time point of view and also from a
13 specific information point of view. So he was
14 saying he couldn't have a thorough enough
15 process in his mind with what he was lacking and
16 how could we help him.

17 Q. Apart from looking for additional
18 assets, was part of the solution that was
19 arrived here that Barclays could substitute
20 collateral? It could take out assets it didn't
21 want and replace it with assets that it did
22 within the repo?

23 A. No. No. No.

24 Q. Other than the search for additional
25 value which you directed Lowitt and Kirk to

Page 170	Page 171
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 supervise, were there any other solutions</p> <p>3 reached to the problem that Barclays had stated,</p> <p>4 that they were concerned about the overall value</p> <p>5 of the assets they were getting?</p> <p>6 A. Not in the meetings that I was at, no.</p> <p>7 Q. How long were you in this meeting?</p> <p>8 A. I don't remember, but it could not</p> <p>9 have been more than half an hour.</p> <p>10 Q. And after your attendance at the</p> <p>11 meeting, did you at any point return to the</p> <p>12 issue, you know, check in by phone, send a</p> <p>13 BlackBerry?</p> <p>14 A. Very likely, yes, because it was an</p> <p>15 important aspect of getting a deal done or not.</p> <p>16 Q. When you say "very likely," do you</p> <p>17 have a recollection of doing that or are you</p> <p>18 inferring from your general management style?</p> <p>19 A. I have a recollection -- no, I have a</p> <p>20 recollection of a combination of both, but I</p> <p>21 have a specific recollection of driving down to</p> <p>22 the bankruptcy court still haven't completely</p> <p>23 resolved the transaction.</p> <p>24 Q. Did there come a point where you</p> <p>25 learned it had been resolved?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. There came a point where we got more</p> <p>3 comfort with the process that we had been</p> <p>4 working on, 15c3, as a value, and there came a</p> <p>5 point in time where we got more comfort that</p> <p>6 there were unencumbered assets and that a</p> <p>7 process was taking place.</p> <p>8 So, quote, that it had been completely</p> <p>9 worked out, no, but yes, confidence that there</p> <p>10 were unencumbered assets that were going to go</p> <p>11 through the same process we had gone through to</p> <p>12 value and also that working -- both Barclays and</p> <p>13 Lehmanites were working with the S.E.C. and I</p> <p>14 believe other regulators -- I wasn't part of the</p> <p>15 process -- around the second counts, the 15c3.</p> <p>16 Q. The Barclays and the Lehmanites were</p> <p>17 not working with the S.E.C. and the other</p> <p>18 regulators with regard to valuation, were they?</p> <p>19 A. No.</p> <p>20 Q. That was just with regard to whether</p> <p>21 the 15c3 --</p> <p>22 A. Exactly.</p> <p>23 Q. -- could be released to be</p> <p>24 transferred?</p> <p>25 A. Exactly.</p>
Page 172	Page 173
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. When you directed Lowitt and Kirk to</p> <p>3 undertake this project of finding additional</p> <p>4 value, did you give them a target they had to</p> <p>5 reach?</p> <p>6 A. I think we understood that the -- that</p> <p>7 there was a differential between Barclays'</p> <p>8 desired outcome, but I don't remember giving</p> <p>9 them a specific target. And again, I wasn't</p> <p>10 there long enough for that specific target to</p> <p>11 be -- for that part of the process.</p> <p>12 Q. Well, sir, a differential between</p> <p>13 Barclays' desired outcome and what?</p> <p>14 A. The -- I don't recall specifically</p> <p>15 giving a target. It was very clear that</p> <p>16 Barclays had a view in terms of the market value</p> <p>17 of the assets, of the new assets in the --</p> <p>18 valued in the repo, and we had a view on what</p> <p>19 cure was, we had a view on what comp was and</p> <p>20 assumed liabilities. It was very clear that</p> <p>21 Barclays still wanted more value in terms of</p> <p>22 assets.</p> <p>23 Q. So the cure and the comp assumed</p> <p>24 liabilities were taken into account in measuring</p> <p>25 this differential between --</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Yes.</p> <p>3 Q. -- Barclays' view and the amount</p> <p>4 needed?</p> <p>5 A. Yes.</p> <p>6 Q. I'm still trying to get some clarity</p> <p>7 on -- this is what I think I hear so far: Kirk</p> <p>8 and Lowitt are supposed to go look for</p> <p>9 additional value with whatever resources they</p> <p>10 can marshal to do that?</p> <p>11 A. Correct.</p> <p>12 Q. Barclays is expressing discomfort</p> <p>13 about the amount of value that it's getting?</p> <p>14 A. Correct.</p> <p>15 Q. You don't know -- you don't remember</p> <p>16 giving them, that is, Kirk and Lowitt, a target,</p> <p>17 go find X amount of additional value.</p> <p>18 Who was going to decide when enough</p> <p>19 additional value had been found?</p> <p>20 A. It's the same, it's the identical</p> <p>21 process that we've been going through. So if</p> <p>22 it's Barclays, the purchaser's, intent to try to</p> <p>23 end up with a transaction where assets and</p> <p>24 assumed liabilities, including cure and comp,</p> <p>25 roughly matched, it's our goal as representing</p>

Page 174

1 HIGHLY CONFIDENTIAL - B. McDADE
2 the estate to make sure that the assets are
3 valued fairly in that process.
4 So we continued the process up unto
5 late into the evening of valuing the assets in
6 the repo and continuing that process and also
7 finding other assets. There was not a specific
8 target because that number in terms of the
9 valuation could still have been moving around.
10 That's why I say I don't remember giving a
11 specific target.
12 Who at the end would have made that
13 ultimate valuation? The risk operators who were
14 still responsible for understanding the value of
15 the assets being transferred and ultimately the
16 deal team in terms of, you know, the individuals
17 involved.
18 Q. This may be my stupidest question of
19 the day, but you've got a team of people looking
20 for assets. They need to have a deal in
21 balance. How were they going to know when to
22 stop? How were they going to know when to stop
23 looking?
24 A. I think the basic premise that I'm
25 trying to communicate is there was a lot of

Page 176

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. Were there any other categories of
3 assets that were included?
4 A. I don't recall.
5 Q. Were there any, any assets, 15c3,
6 unencumbered or otherwise, that could have been
7 transferred to Barclays that were not
8 transferred to Barclays?
9 A. Any assets?
10 Q. Anything, yes.
11 A. I gave you an example before of Eagle
12 Energy as an example.
13 Q. And why did Eagle Energy come out of
14 the deal?
15 A. I don't know the specifics. I think
16 it -- I don't know the specifics.
17 Q. It's because Barclays didn't want it,
18 isn't that right?
19 A. It's a -- I don't know the specifics
20 so I can't answer the question.
21 Q. You have no --
22 A. I don't know the specifics.
23 Q. So the team's looking for additional
24 assets to make up this difference. Apart from
25 Eagle Energy, are there any assets that that

Page 175

1 HIGHLY CONFIDENTIAL - B. McDADE
2 challenges in ascertaining perfect information
3 in terms of what were unencumbered assets. So
4 the first real challenge that the team had to go
5 through that I instructed them on was not,
6 here's a target, it was what are the
7 unencumbered assets. Not that all the
8 unencumbered assets are therefore going to go.
9 What are the unencumbered assets so we can
10 define what it is that, if a transaction needed
11 more assets, could be possibly applied. And the
12 same confusion applied to 15c3.
13 So, in fairness, it didn't matter what
14 the target was. If we didn't have unencumbered
15 assets or we didn't have comfort that Barclays
16 or the regulators would be comfortable with
17 15c3, we wouldn't be able to do that.
18 Q. So assets available for transfer as
19 part of this project --
20 A. Right.
21 Q. -- constituted 15c3 and unencumbered
22 assets?
23 A. Right.
24 Q. Yes?
25 A. Yes.

Page 177

1 HIGHLY CONFIDENTIAL - B. McDADE
2 team identifies that don't wind up going over to
3 Barclays? Is there any excess that the estate
4 needs to keep -- that the estate gets to keep?
5 A. To the best of my knowledge, the other
6 overriding -- we were trying to manage the
7 actual risk of Lehman. To the best of my
8 knowledge, "no" is the answer to your question.
9 That's the reason we were trying to
10 get fair value for all of our assets. Because
11 we were unable to operate in the marketplace at
12 the same time. We were being shut at DTC. All
13 our counterparts wouldn't do business with us.
14 We had employees in and out, et cetera. So it
15 was an impossible struggle to manage any assets.
16 We were motivated from a Lehman point
17 of view to mitigate risk to include assets in
18 the process. So, to the best of my knowledge,
19 the answer is "no" to your question.
20 Q. Was it communicated to you at some
21 point that the asset value -- that the search
22 for additional value had been successful?
23 A. The search for other assets had been
24 successful, yes.
25 Q. Was it communicated to you that the

Page 178

1 HIGHLY CONFIDENTIAL - B. McDADE
2 amount of additional value that was found had
3 been determined to be sufficient?
4 A. Yes.
5 Q. And was it communicated to you who
6 made the determination that the amount of
7 additional value that was found was sufficient?
8 A. Again, I go back to --
9 Who made those determinations in terms
10 of the process?
11 Q. Yes.
12 A. So that would have been Alex Kirk,
13 given I was in bankruptcy court, you know, with
14 my proxy, and his deal teams, along obviously
15 with the folks at BarCap on the other side, on
16 the risk side.
17 Q. And where were you when you learned
18 that the project had been -- the project to find
19 additional value had been found?
20 A. Bankruptcy court.
21 Q. You were in the courthouse? How was
22 it communicated to you that the project was
23 successful?
24 A. How was it communicated to me?
25 Q. By what means?

Page 180

1 HIGHLY CONFIDENTIAL - B. McDADE
2 A. Correct.
3 Q. I guess my question is, whose mouth
4 and what words? Who told you this?
5 A. I don't recall. Keep in mind that
6 I'm, many parts of the evening, on the witness
7 stand.
8 Q. Sure. Can you recall any -- you're
9 paying close attention through the whole
10 hearing? It's a big deal, right?
11 A. Yes.
12 Q. Do you recall any part of the hearing
13 where anybody tells the judge about the search
14 for additional value?
15 A. I don't recall that process. I recall
16 a process where we started the bankruptcy -- we
17 started the meeting by going to a recess to
18 educate the masses on what the concept of the
19 deal was and that certain specifics including,
20 for example, leaving the commercial real estate
21 had yet to be, quote, finalized, but over the
22 course of the evening it would be. That's all I
23 recall.
24 Q. Were the masses told that the bulk of
25 the assets to be conveyed to Barclays were those

Page 179

1 HIGHLY CONFIDENTIAL - B. McDADE
2 A. By means of word of mouth and once in
3 a while a BlackBerry.
4 Q. You got a BlackBerry from them? Do
5 you remember getting an e-mail from them telling
6 you this?
7 A. No, I don't remember getting an
8 e-mail. Collective, collective bits of
9 information. BlackBerries were checked at
10 the -- best of my knowledge, most BlackBerries
11 were checked.
12 Q. You can't use your phone in the
13 courthouse, though, right?
14 A. To the best of my understanding, no.
15 Q. Your means of communication were
16 either you get an e-mail on your BlackBerry or
17 somebody tells you something, right?
18 A. That's correct.
19 Q. And you don't recall getting an e-mail
20 reporting to you that the project was
21 successful, correct?
22 A. I don't recall getting an e-mail.
23 Q. And you do recall, at least in part,
24 learning by word of mouth that the project had
25 been successful?

Page 181

1 HIGHLY CONFIDENTIAL - B. McDADE
2 within the Repurchase Agreement? Had they told
3 the details of repo and its role in the deal?
4 A. I don't recall that.
5 Q. Were they told about the search for
6 15c3 and unencumbered assets to make up the
7 difference between the perceived value of the
8 repo and what Barclays needed to close?
9 A. No, they were not told that
10 specifically.
11 Q. Were they told the valuations that
12 Barclays had applied itself to the amount of
13 collateral in the repo?
14 A. No.
15 Q. Were they told that the Clarification
16 Letter would have addressed these changes in the
17 purchased assets?
18 A. There was -- there was clear rhetoric
19 around letter clarifying over the weekend the
20 deal terms.
21 Q. Were they shown any draft of that
22 letter?
23 A. I don't know.
24 Q. Was the judge shown any draft of that
25 letter?

<p style="text-align: right;">Page 182</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I don't know.</p> <p>3 Q. Did you talk to Mr. Ricci, talk or</p> <p>4 otherwise communicate with Mr. Ricci about this</p> <p>5 Friday project to find additional value to</p> <p>6 transfer to Barclays?</p> <p>7 A. Did I talk to Mr. Ricci specifically?</p> <p>8 No, I did not. Other than he would have been</p> <p>9 present, I believe, in the morning meeting.</p> <p>10 Q. Do you recall Mr. Ricci saying to you</p> <p>11 in substance that he wouldn't let this trade</p> <p>12 blow up by being piggish?</p> <p>13 A. No, Mr. Ricci never said that to me.</p> <p>14 Q. You're certain he never said that to</p> <p>15 you?</p> <p>16 A. He never said that to me. I'm</p> <p>17 certain.</p> <p>18 Q. How much additional value was found in</p> <p>19 15c3 and unencumbered assets?</p> <p>20 A. I believe the 15c3 was the figure that</p> <p>21 I was confusing before, was between 750 and 800</p> <p>22 million of value, and I believe the unencumbered</p> <p>23 assets was a billion-9.</p> <p>24 Q. So with 2.7 billion in additional</p> <p>25 value, did the deal now balance, in your view?</p>	<p style="text-align: right;">Page 183</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Yes.</p> <p>3 Q. Did you know whether it balanced with</p> <p>4 an addition 2.7 billion in additional value?</p> <p>5 A. I knew that the deal team had gone</p> <p>6 through the same process through the course of</p> <p>7 all the way into the afternoon and evening. I</p> <p>8 specifically was unable at that moment in time,</p> <p>9 given where I was sitting and obligated to do.</p> <p>10 Q. Uh-huh.</p> <p>11 A. But, yes, I felt comfortable given who</p> <p>12 was in the process and what was process was.</p> <p>13 Q. And the balance, this concept of a</p> <p>14 balance in the transaction at this point still</p> <p>15 depended on the 1.5 billion in assumed</p> <p>16 liabilities for trade payables and 2 billion in</p> <p>17 assumed liabilities for compensation, correct?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. And it also depended on an accurate</p> <p>20 valuation of the collateral actually being</p> <p>21 transferred, correct?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. When those three elements are added</p> <p>24 up -- I'm sorry, when those elements are</p> <p>25 compared, your view of the deal was they should</p>
<p style="text-align: right;">Page 184</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 balance and there would be no immediate gain to</p> <p>3 Barclays, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Did Barclays share with you or with</p> <p>6 anyone on the Lehman team the value that they</p> <p>7 did determine applied to the collateral in the</p> <p>8 Repurchase Agreement?</p> <p>9 A. No.</p> <p>10 Q. Did they ever tell you what the amount</p> <p>11 of the --</p> <p>12 A. To me?</p> <p>13 Q. You or, to your knowledge, anyone</p> <p>14 under your supervision.</p> <p>15 A. Of course they would have gone through</p> <p>16 the process of valuing the collateral, just as</p> <p>17 they had done, again, all week in terms of the</p> <p>18 assets.</p> <p>19 Q. Yes.</p> <p>20 A. So the answer: The deal team, yes.</p> <p>21 To me, no.</p> <p>22 Q. Did you learn from the deal team that</p> <p>23 Barclays said we're short by X amount?</p> <p>24 A. Yes, absolutely. Over the course of</p> <p>25 time.</p>	<p style="text-align: right;">Page 185</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. And over the course of time did the</p> <p>3 deal team let you know what X amount was, what</p> <p>4 the shortfall was?</p> <p>5 A. Ultimately, the shortfall --</p> <p>6 ultimately, the satisfaction of the process of</p> <p>7 the deal teams working together got to a point</p> <p>8 where Barclays would do a transaction.</p> <p>9 So, again, you're pushing towards this</p> <p>10 notion of something that we were pushing toward</p> <p>11 correct valuation of the assets that we had on</p> <p>12 our books. They were pushing for a deal on the</p> <p>13 best terms. There was no target given other</p> <p>14 than continued valuation of these assets and</p> <p>15 trying to get and extract market valuation for</p> <p>16 them. In the process, it ultimately consummated</p> <p>17 with Barclays being comfortable with the</p> <p>18 transaction which ultimately contemplated in</p> <p>19 roughly the assets and liabilities matching.</p> <p>20 Q. And given what you heard in the</p> <p>21 bankruptcy hearing on the 19th of September,</p> <p>22 where you heard the deal described to the judge</p> <p>23 as essentially a balance --</p> <p>24 A. Right.</p> <p>25 Q. -- it would have been important in</p>

Page 186

1 HIGHLY CONFIDENTIAL - B. McDADE
2 your view, sir, to tell the judge if it was not
3 in fact in balance because that's a different
4 deal, is it not?
5 A. Most definitely, yes, sir.
6 Q. Mr. McDade, I'm handing you what has
7 previously been marked as Exhibits 24 and 25.
8 Ask you if you recognize those documents?
9 A. Yes, I do.
10 Q. What are they?
11 A. The First Amendment to the purchase
12 agreement and second is the clarifying -- I
13 believe the clarifying letter.
14 Q. Now, did you have any involvement with
15 the negotiation of the business terms of the
16 First Amendment?
17 A. Yes.
18 Q. Can you briefly describe to me what
19 your involvement was?
20 A. As I said, the involvement that I had
21 had to do with the excluded assets and purchased
22 assets change with respect to the residential
23 mortgages.
24 Q. And then the Clarification Letter,
25 sir, dated as of September 20, Exhibit 25, were

Page 188

1 HIGHLY CONFIDENTIAL - B. McDADE
2 involved in negotiating the terms of paragraph
3 I, Purchased Assets?
4 A. So that would have been -- that would
5 have been our -- that would have been a
6 combination of Kelly, Lowitt, Kirk, McGee,
7 Berkenfeld.
8 Q. Any others?
9 A. Our advisors, our advisors from Weil.
10 That's it.
11 Q. Would you turn to paragraph 13.
12 Actually --
13 A. Page 13 or paragraph?
14 Q. Actually, I'm in the wrong place.
15 Hold on one second.
16 Would you turn to page 4, paragraph 9,
17 please. You with me?
18 A. Uh-huh.
19 Q. That section concerns the deletion of
20 a purchase price adjustment?
21 A. Right, the original deal had
22 contemplated a hold-back, if you will, if
23 Barclays earned profits and profits going back
24 to the Lehman estate.
25 Q. Do you recall, we can show you, but

Page 187

1 HIGHLY CONFIDENTIAL - B. McDADE
2 you involved in the negotiation of the business
3 terms of this letter?
4 A. I was involved in some of the
5 negotiation terms of some of this, yes.
6 Q. Which parts?
7 A. For example, clarification around the
8 IMD business.
9 Q. That's paragraph 2?
10 A. Paragraph 2 on page 3. I certainly
11 was understanding and knowledgeable about the
12 cash, the DTC issue, which is paragraph D up
13 above; the clarification of the Lehman name and
14 licensing for two years; the subleases for
15 offices I would have been involved in, page 5,
16 since they inherited certain business
17 obligations.
18 That's it, to the best of my
19 recollection.
20 Q. Did you have any involvement in the
21 negotiation of the terms reflected in paragraph
22 1, Purchased Assets?
23 A. Specifically, no. Generally, I was
24 aware of.
25 Q. Who on the team of businesspeople was

Page 189

1 HIGHLY CONFIDENTIAL - B. McDADE
2 maybe to save a little time, do you recall
3 generally that the terms of that purchase price
4 adjustment were that Lehman would share in the
5 upside of any profit on the long position up to
6 a cap of 750 million?
7 A. I recall a cap and I recall a
8 construct of -- you know, I don't know all the
9 specifics, but yes.
10 Q. Why did that come out in the
11 Clarification Letter?
12 A. Because the original balance sheet
13 changed so dramatically from Tuesday to Friday,
14 and a combination of the changes, the Barclays
15 assumption of the repo and negotiation, to be
16 blunt.
17 Q. When you say "negotiation, to be
18 blunt," the fact is Barclays just said that's
19 got to come out for us to do the deal; is that
20 right?
21 A. Well, Barclays was ascribing a value
22 to it like we were, and as part of the process,
23 no, I'm not -- I'm not suggesting Barclays
24 said -- those are your words, no.
25 Over the course of the week, value

Page 190

1 HIGHLY CONFIDENTIAL - B. McDADE
2 ascribed in different ways, value taken away in
3 different ways. We thought that that -- that
4 that feature didn't represent as much value
5 given the change in the mix.

6 Q. And was that, was the value of that
7 feature, the potential upside to Lehman,
8 attributed to any particular securities that
9 were being transferred? I'm trying to find out
10 how that got involved in the valuation, if at
11 all.

12 A. You mean in the original
13 contemplation?

14 Q. No, I'm on the -- we're on the weekend
15 and the potential 750 million upside to Lehman's
16 being taken out of the deal. And if I
17 understand your answer, it's because of the
18 drops in value and the changes in value and the
19 buckets of securities.

20 Was the decision to eliminate a
21 potential upside of 750 million to Lehman
22 attributed to a drop in value of any particular
23 security?

24 A. No. It was our view that the upside
25 had changed dramatically, meaning there was much

Page 191

1 HIGHLY CONFIDENTIAL - B. McDADE
2 less upside because there was a lot less in the
3 way of values. We would have assigned less
4 value to that as part of the process in terms of
5 what that value could be.

6 Q. But it did not derive from any
7 analysis of a particular asset or class of
8 assets?

9 A. It derived from analysis of all the
10 assets. Continued on the bottoms-up process.

11 Q. And would you take a look at paragraph
12 13, please, on page 5. Take a moment to read
13 that to yourself.

14 (Document review.)

15 Q. Have you had a chance to look that
16 through?

17 A. I have.

18 Q. You see, sir, that that, as a general
19 matter -- and it's my description, not the
20 actual words -- is a paragraph that terminates
21 the Repurchase Agreement we've been talking
22 about, correct?

23 A. Yes.

24 Q. And it also -- and now I'm reading in
25 the last sentence, "Additionally, the Notice of

Page 192

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Termination relating to the Barclays Repurchase
3 Agreement dated September 19, 2008, is hereby
4 deemed rescinded and void ab initio in all
5 respects," do you see that?

6 A. Uh-huh.

7 Q. Do you have any understanding of why
8 that provision was put in the Clarification
9 Letter?

10 A. No, I do not.

11 Q. Any understanding at all?

12 A. No, I do not.

13 Q. Did you discuss that provision with
14 anyone at the time of the closing on the 22nd?

15 A. No, I did not.

16 Q. Did you go to the closing?

17 A. Did I go to the closing? No, I did
18 not.

19 Q. Is there a reason you didn't go to the
20 closing other than the fact you were probably
21 very tired by then?

22 A. I don't recall the specific reason why
23 I didn't go to the closing.

24 Q. And I note that Mr. Berkenfeld signed
25 this document as well. Is there a reason he

Page 193

1 HIGHLY CONFIDENTIAL - B. McDADE
2 signed it instead of you?

3 A. You asked me that question before. It
4 was the common practice within Lehman for the
5 lawyers to sign the documents, so that wouldn't
6 have been part of anything. The role was new to
7 me, you know, over a period of time, but that
8 wouldn't have been normal course of business.

9 Q. And when it was the common practice
10 within Lehman for the lawyers to sign the
11 documents, was it also the common practice for
12 the businesspeople to communicate to those
13 lawyers all the terms that they had agreed to so
14 that the documents signed reflected the terms?

15 A. Most definitely. Most definitely.
16 Including our outside legal advisors.

17 Q. Also including Mr. Berkenfeld?

18 A. Absolutely.

19 Q. Now, I asked you before, and I may
20 have misspoke, do you recall anyone
21 communicating to you that Rich Ricci said he
22 wouldn't blow up the trade by being a pig?

23 A. You asked me before if Rich Ricci
24 spoke to me directly.

25 Q. Correct.

Page 194

HIGHLY CONFIDENTIAL - B. McDADE

A. He did not speak to me directly.

Q. Was that sentiment communicated to you?

A. That sentiment was communicated to me.

Q. This has previously been marked as Exhibit 36, sir -- 326, and it contains an e-mail from Alex Kirsch to you on Friday, September 19, at 3:39.

A. Uh-huh.

Q. And it says, "Rich Ricci just told me he won't blow up this trade by being a pig."

A. Uh-huh.

Q. And at 3:39 that afternoon, I'm guessing you're in court, or on your way; is that right?

A. Driving.

Q. And what did you understand Mr. Kirk to be communicating to you when you sent -- when he sent this e-mail to you?

A. That if the finishing up of the process of the assets that we were looking for, unencumbered and the 15c3, didn't add up, that Barclays would still do the transaction. That's what I understood.

Page 196

REDACTED

(Exhibit 335, a document bearing Bates Nos. BCI-EX-(S)-50261, marked for identification, as of this date.)

Q. Mr. McDade, I have put before you a document we've marked as Exhibit 335.

A. Yes.

Q. Have you seen this document before?

Page 195

HIGHLY CONFIDENTIAL - B. McDADE

Q. Did you ever get a sense of what Barclays' tolerance was on that point?

A. No. No. I had no means to communicate directly with Mr. Kirk at the time.

Q. Well, you responded to him by e-mail, "Are all the shorts gone?" So that's one means, right?

A. Yeah, but literally I was walking in the door.

Q. And when you were walking in the door, did you --

A. No, I had not.

Q. You didn't write back to Mr. Kirk and ask, "Well, what's their tolerance? How short can we fall and Barclays will still do the trade?" Right?

A. No, I did not.

Q. Did you ever ask him that question?

A. No, I did not.

REDACTED

Page 197

HIGHLY CONFIDENTIAL - B. McDADE

A. This document?

Q. Correct.

A. I believe this is me clicking on the Barclays system to be accepted as a Barclays employee.

Q. Okay.

A. Accepting an offer of employment, I guess.

REDACTED

Q. Okay. Can you think of any reason that Barclays would deem this document to be highly confidential, sir? Do you think this is a big secret?

A. This document?

Q. Yes.

A. No, it was reported in the press

Page 198

1 HIGHLY CONFIDENTIAL - B. McDADE
2 and -- no.

3 Q. Thanks.

4 A. Every employee had to click the box to
5 accept employment.

6 Q. This search for additional value that
7 we were talking about before, I know there was a
8 meeting on Friday morning, you mentioned that to
9 me. Had the search been done at all before
10 that?

11 A. I believe the clarification of the
12 assets what we had, what was encumbered,
13 unencumbered, et cetera, had been happening all
14 week.

15 To the best of my recollection, the
16 search for me to continue to find assets both
17 for the motivation of we were having a hard time
18 managing any assets because we couldn't manage
19 hedges or anything, from Lehman's motivation,
20 yes, and also from the point of view of we
21 didn't know what the ultimate terms would be and
22 we wanted to make sure that we were availing
23 ourselves of all possible outcomes, yes.

24 Q. But the particular work that we were
25 talking about where you directed Kirk and Lowitt

Page 199

1 HIGHLY CONFIDENTIAL - B. McDADE
2 to go look for sources, you know, what wound up
3 being the 15c3 and the unencumbered assets, did
4 that begin on the Friday morning?

5 A. To the best of my knowledge,
6 unencumbered assets did not begin on the Friday
7 morning. It began earlier in terms of finding
8 assets that would be part of a transaction. So
9 that work would have been done earlier. I --

10 Q. And when did -- I beg your pardon. Go
11 ahead.

12 A. I don't know the specifics, to answer
13 your question, when they might have been.

14 Q. When did it end? Did it end on the
15 Friday or did it continue over the weekend?

16 A. Oh, it continued over the weekend.

17 Q. On both days of the weekend?

18 A. We were -- the work continuing over
19 the weekend, most of Sunday would have been
20 related to all of the protagonists were working
21 on the DTC issue. We were all locked in at
22 Weil. We at Lehman were sequestered in the
23 corner working on the specific DTC issues and
24 understanding what the ramifications would be.

25 So, no, it wouldn't have -- it

Page 200

1 HIGHLY CONFIDENTIAL - B. McDADE
2 wouldn't have been over all of the weekend. It
3 would have been Saturday, primary. Friday
4 evening, Saturday morning, Saturday.

5 Q. What was the value of the deal? When
6 the deal was done, what was the value of what
7 Barclays received and what was the value of what
8 Barclays gave?

9 A. I have never seen a final balance
10 sheet, so I can't give you a specific answer.

11 Q. Do you have a general idea of the deal
12 that you negotiated, what it was worth and who
13 gave what?

14 A. The general idea is 1.29 billion for
15 Lehman's 745 headquarters, the two data centers,
16 250 million in goodwill, cure payments,
17 compensation that we have spoken to, and the
18 value of unwinding the repo.

19 That actual number, roughly speaking,
20 was, roughly speaking, the combination of the
21 15c3, the figure you talked before, the 45, and
22 the unencumbered assets. That's roughly the
23 deal, but I've never seen the final. I've never
24 seen, never been given the final number.

25 Q. Again, using those rough numbers, and

Page 201

1 HIGHLY CONFIDENTIAL - B. McDADE
2 I appreciate that's how you're describing them,
3 45 billion for the repo, right?

4 A. Uh-huh.

5 Q. Plus approximately 800 million for the
6 15c3?

7 A. Uh-huh.

8 Q. Right?

9 And 1.9 --

10 A. Uh-huh.

11 Q. -- in unencumbered assets?

12 A. Uh-huh.

13 Q. Again, net of the real estate, because
14 we have sort of stayed out of that topic the
15 whole day.

16 A. Uh-huh.

17 Q. That's 47.7, right? That's your
18 estimate of the amount of value that Barclays
19 received, correct?

20 MR. HUME: Objection.

21 MR. BUCKLEY: Objection.

22 MR. HUME: Lacks foundation.

23 MR. BUCKLEY: Did you include the 250
24 for goodwill?

25 MR. GAFFEY: I beg your pardon. I

Page 202	Page 203
<p>1 HIGHLY CONFIDENTIAL - B. McDADE 2 didn't. 3 Q. 47.950? 4 MR. HUME: Objection. Lacks 5 foundation. 6 MR. BUCKLEY: Objection. Same. 7 MR. GAFFEY: Is my math wrong? 8 A. It's goodwill is the other way around. 9 They're paying us. 10 Q. That's what I thought. They wanted me 11 to add it in. Let's take it back out. 12 MR. BUCKLEY: A trick question. 13 MR. GAFFEY: It's a trick objection. 14 MR. BUCKLEY: I have to throw one at 15 you today. Keep you awake. 16 MR. GAFFEY: I'm just kidding. 17 Q. Barclays gets 45 billion in the repo, 18 yes? 19 A. Uh-huh. 20 Q. 800 million in 15c3? 21 A. Uh-huh. 22 Q. And 1.9 billion in unencumbered 23 assets? 24 A. Uh-huh. 25 Q. Which by my math comes to \$47.7</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE 2 billion, we agree on that? 3 A. Uh-huh. 4 Q. And Barclays gave 250 million and what 5 else add up the Barclays consideration? 6 A. The building. 7 Away from the building? 8 Q. Away from the building. 9 A. They expunged the loan on the repo, 10 right? So that's 45. 11 Q. 45. 12 A. Right. And then assumed the cure 13 payments. 14 Q. At let's call that 1.5? 15 A. Yes. 16 Q. As described to the court? 17 A. Yes. 18 Q. Okay. 19 A. And assumed the comp. 20 Q. And assumed the comp. 21 Which by my calculation comes to 48.7; 22 is that right? 23 A. Uh-huh. I don't know. I'm not 24 looking at your math. I'm not doing it in my 25 head.</p>
Page 204	Page 205
<p>1 HIGHLY CONFIDENTIAL - B. McDADE 2 Q. I think I've added it up right. 3 48.750. 4 So, first, sir, is there an 5 explanation for the billion-dollar difference 6 between the two? 7 MR. BUCKLEY: Objection. Foundation. 8 Q. Barclays gives, on these numbers, 9 48.7; gets 47.7? 10 MR. BUCKLEY: Objection. Same. 11 A. You're excluding the buildings, right? 12 Q. Yes. 13 A. I can't read your math and look at it 14 upsidedown, so I have to go through this process 15 myself. 16 Q. Okay. Can you do that? 17 A. I would rather not interpret your ... 18 (The witness calculates.) 19 A. Of what we're adding up, I get 47.7 20 and 48.75. 21 Q. And the 47.7 is the value that 22 Barclays receives? 23 MR. HUME: Objection. Lack of 24 foundation. 25 A. Again, 1.9 billion of identified</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE 2 assets that Lehman finds. Then there's a 3 valuation process to identify what those assets 4 are worth. I'm not part of that process. It's 5 up to the final balance sheet. 6 MR. GAFFEY: I think just for the 7 clarity of the record I would like to mark 8 that as an exhibit. 9 MR. HUME: I would like to state for 10 the record that the document being marked is 11 the witness's handwritten down numbers that 12 Mr. Gaffey gave him. 13 MR. GAFFEY: Okay. We'll read the 14 record and see what they really were, but 15 you can characterize them however you want. 16 (Exhibit 336, handwritten calculation, 17 marked for identification, as of this date.) 18 Q. You've taken account in there of 19 the -- "in there" being what we have now marked 20 as Exhibit 336 -- the assumed liabilities for 21 comp and cure at a total of 3.5, right? 22 A. That's correct. 23 Q. Now, to your knowledge, sir, was there 24 at any point -- you remember we spoke before 25 about the Repurchase Agreement having a haircut,</p>

Page 206	Page 207
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 the collateral in excess of the amount financed?</p> <p>3 A. Yes.</p> <p>4 Q. Where did that go? Who gets the</p> <p>5 haircut on your math?</p> <p>6 A. The repo was essentially expunged,</p> <p>7 right?</p> <p>8 Q. Including the haircut?</p> <p>9 A. Including the haircut.</p> <p>10 Q. So --</p> <p>11 A. It's all in the value of the process.</p> <p>12 Q. So your 45 is --</p> <p>13 A. The assets themselves, not the repo</p> <p>14 loan.</p> <p>15 Q. Okay. Just so I'm -- let me put a</p> <p>16 full question because I want to be sure I'm</p> <p>17 clear on your testimony here.</p> <p>18 The 45 that you calculate is the total</p> <p>19 of the -- of all the assets in the repo?</p> <p>20 A. The repo contract is a set of assets</p> <p>21 and a loan against those assets, haircut</p> <p>22 typically being somewhat less than those assets,</p> <p>23 right? So the haircut, the haircut being the</p> <p>24 total loan is somewhat less than the total</p> <p>25 assets.</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Okay. And the haircut, just so we're</p> <p>3 clear on our terms, the haircut is the</p> <p>4 difference between the total loan and the total</p> <p>5 assets?</p> <p>6 A. That's correct.</p> <p>7 Q. It could also be the excess collateral</p> <p>8 over the amount of the loan, yes?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay.</p> <p>11 A. That's correct.</p> <p>12 So, yes, it's written in the document</p> <p>13 we just reviewed, the -- yeah, the repo</p> <p>14 paragraph.</p> <p>15 Q. The Clarification Letter?</p> <p>16 A. The Clarification Letter. So they</p> <p>17 kept the collateral in terms of the process</p> <p>18 because of the valuation process that both the</p> <p>19 teams had been going through.</p> <p>20 Q. And when you calculated the 45 here on</p> <p>21 Exhibit 336 --</p> <p>22 A. And I calculated --</p> <p>23 MR. HUME: Those were your numbers.</p> <p>24 A. I put your numbers in. I didn't</p> <p>25 calculate anything. I used your numbers and</p>
Page 208	Page 209
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 added it up to make sure your math correctly --</p> <p>3 Q. Let's do this again, sir, because I</p> <p>4 need your testimony. Could you please calculate</p> <p>5 for me what were the numbers on the deal that</p> <p>6 you negotiated?</p> <p>7 MR. HUME: Objection.</p> <p>8 Q. Forget anything I told you. Could you</p> <p>9 write down the numbers on the deal that you</p> <p>10 negotiated, sir?</p> <p>11 MR. BUCKLEY: Mr. Gaffey, you've</p> <p>12 behaved yourself all day. Please calm down.</p> <p>13 Mr. McDade has explained he's never</p> <p>14 seen the final balance sheet from the</p> <p>15 transaction. If you have it, why don't you</p> <p>16 show it to him.</p> <p>17 Q. I'll clarify the record.</p> <p>18 MR. BUCKLEY: You better back off a</p> <p>19 little.</p> <p>20 Q. Apart from whether you've seen a fully</p> <p>21 calculated balance sheet, sir, do you have a</p> <p>22 concept of the deal, the negotiation you led on</p> <p>23 behalf of Lehman as to what the value was of</p> <p>24 what was given to Barclays?</p> <p>25 A. Do I have a concept?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Yeah, do you have a rough idea of what</p> <p>3 went to Barclays and what it consisted of?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Could you tell me what the components</p> <p>6 were that went to Barclays and what they were</p> <p>7 worth?</p> <p>8 MR. BUCKLEY: Objection. Asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I'm sorry?</p> <p>11 MR. BUCKLEY: You may answer.</p> <p>12 Q. You can answer.</p> <p>13 MR. BUCKLEY: It's just repetitive of</p> <p>14 what he said.</p> <p>15 A. The assets that were unencumbered, the</p> <p>16 15c3, what the ultimate valuation was of the</p> <p>17 Barclays repo, the unwinding of the Barclays</p> <p>18 repo in terms of the cash, right, in terms of</p> <p>19 the 45, the cure payments, and the compensation.</p> <p>20 Q. What was the ultimate value of the</p> <p>21 Barclays repo?</p> <p>22 A. I did not see the final. I did not</p> <p>23 see the final balance sheet.</p> <p>24 Q. What's your best estimate as you sit</p> <p>25 here today, having negotiated the deal, of what</p>

Page 210	Page 211
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 the ultimate value of the Barclays repo was?</p> <p>3 MR. HUME: Objection. Calls for</p> <p>4 speculation.</p> <p>5 MR. BUCKLEY: Objection. Foundation.</p> <p>6 THE WITNESS: You want me to answer?</p> <p>7 MR. BUCKLEY: Go ahead.</p> <p>8 Q. You can answer.</p> <p>9 A. My best guess is 45.</p> <p>10 Q. And your best guess of 45, does that</p> <p>11 include all of the collateral in the repo, yes?</p> <p>12 A. Yes.</p> <p>13 Q. When you say it includes all of the</p> <p>14 collateral in the repo, that includes the</p> <p>15 haircut, correct?</p> <p>16 MR. BUCKLEY: Objection.</p> <p>17 MR. HUME: Objection. Vague and</p> <p>18 ambiguous.</p> <p>19 MR. BUCKLEY: Misstates the testimony.</p> <p>20 Q. With all of that, sir, you may still</p> <p>21 answer.</p> <p>22 A. Yes.</p> <p>23 Q. And that, and again, I understand it's</p> <p>24 your best estimate, but is that best estimate</p> <p>25 based on the value that Lehman gave to the</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 collateral in the repo, Barclays gave to the</p> <p>3 value to the collateral in the repo, or</p> <p>4 something else?</p> <p>5 A. I have described the process and I</p> <p>6 would answer the same way. Barclays obviously</p> <p>7 had a view as the purchaser. Lehman has a view</p> <p>8 as the responsible owner of the assets. It's a</p> <p>9 mutual agreement of the two.</p> <p>10 Q. Okay. I guess that's -- did they come</p> <p>11 to a common view?</p> <p>12 A. Yes.</p> <p>13 Q. And what was the level of your</p> <p>14 involvement in -- your personal involvement in</p> <p>15 that valuation?</p> <p>16 A. I've tried to describe over the course</p> <p>17 of the different questions. My personal</p> <p>18 involvement was making sure that the teams were</p> <p>19 in place and the process was constantly in place</p> <p>20 through the course of the week. I did not have</p> <p>21 direct personal involvement in terms of the</p> <p>22 actual negotiations.</p> <p>23 Q. Who on the Lehman team had the</p> <p>24 responsibility to make that call, to make the</p> <p>25 agreement with Barclays as to what the</p>
Page 212	Page 213
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 collateral in the repo was worth?</p> <p>3 A. Michael Gelband, Alex Kirk, all the</p> <p>4 different risk operators within the different</p> <p>5 business units.</p> <p>6 Q. Again, it may be my unfamiliarity with</p> <p>7 this part of the world, but at some point some</p> <p>8 one person makes the decision, right, after a</p> <p>9 process? Somebody makes the call?</p> <p>10 A. Absolutely.</p> <p>11 Q. Who was it?</p> <p>12 A. Absolutely.</p> <p>13 Q. Who made the call as to what the value</p> <p>14 was of the collateral in the repo?</p> <p>15 A. What the value was in the collateral</p> <p>16 of the repo, that would have been the head of</p> <p>17 risk, which would have been Michael Gelband, but</p> <p>18 in concert with others, coming to me and</p> <p>19 communicating he's gone through a thorough</p> <p>20 process and has reached an agreement.</p> <p>21 (Discussion off the record.)</p> <p>22 (Recess; Time Noted: 2:40 P.M.)</p> <p>23 (Time Noted: 2:53 P.M.)</p> <p>24 BY MR. GAFFEY:</p> <p>25 Q. Now, did it ever come to your</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 attention, sir, that in anticipation of the</p> <p>3 closing, personnel within Lehman prepared an</p> <p>4 opening balance sheet to reflect the</p> <p>5 transaction?</p> <p>6 A. I have a vague recollection.</p> <p>7 Q. Let me show you -- do you recall it</p> <p>8 being prepared by Mr. Robert Azerad, working</p> <p>9 with Kelly and Tonucci?</p> <p>10 A. I know who he is. I don't recall in</p> <p>11 specific who would have prepared it.</p> <p>12 Q. Let me show you what's previously been</p> <p>13 marked as Exhibit 229. Take a look through the</p> <p>14 document, if you would, sir. Let me know when</p> <p>15 you've had a chance to look that through.</p> <p>16 A. Okay.</p> <p>17 Q. Have you seen that opening balance</p> <p>18 sheet before?</p> <p>19 A. I have not.</p> <p>20 Q. You'll note, sir, that the balance</p> <p>21 sheet is annexed to an e-mail from Robert</p> <p>22 Azerad. You said you know who he is?</p> <p>23 A. Yes.</p> <p>24 Q. Who is he?</p> <p>25 A. He's an old employee of Lehman in the</p>

Page 214	Page 215
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 finance area.</p> <p>3 Q. Did he work under Kelly and Lowitt or</p> <p>4 with Kelly and Lowitt?</p> <p>5 A. Yes. Yes, he did.</p> <p>6 Q. Under?</p> <p>7 A. Under.</p> <p>8 Q. And you recognize the names in the</p> <p>9 "to" line here, Gary Romain, James Walker, TJ</p> <p>10 Gavenda?</p> <p>11 A. No, sir.</p> <p>12 Q. Now, you'll see on the -- the e-mail</p> <p>13 itself reads "Copy of Opening Balance Sheet," do</p> <p>14 you see that?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And that balance sheet, sir, covers</p> <p>17 first cash and cash equivalent and then a</p> <p>18 variety of inventory and the 15c3 stuff that</p> <p>19 we've been talking about, do you see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And it also covers the accrued bonuses</p> <p>22 at 2 billion and the cure payments at the</p> <p>23 original number of 250, do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And it reflects a valuation of the</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 inventory, and by this point, by the point of</p> <p>3 this -- by the date this is sent, which is</p> <p>4 Sunday, September 21, the inventory we're</p> <p>5 talking about in the transaction is the</p> <p>6 inventory in the repo, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And this values the inventory</p> <p>9 of the repo at 44,880,000,000; is that right?</p> <p>10 A. That's what this document says.</p> <p>11 Q. And it puts the 15c3 amount at a</p> <p>12 billion, do you see that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And when you add in the cash and cash</p> <p>15 equivalents, it comes out to 52.8 billion, do</p> <p>16 you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And below the "Asset" line is the cash</p> <p>19 received from Barclays, and it recounts the 45</p> <p>20 billion for the repo. We talked about that</p> <p>21 number, right?</p> <p>22 A. Yes.</p> <p>23 Q. And the \$250 million cash payment?</p> <p>24 A. Yes.</p> <p>25 Q. Totals at 45-billion-250 and then</p>
Page 216	Page 217
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 takes accounts of the accrued bonuses and the</p> <p>3 cure payments, right?</p> <p>4 A. Yes.</p> <p>5 Q. And then there's a provision of equity</p> <p>6 of \$3.38 billion. Now, as I read this, sir,</p> <p>7 that would be equity to Barclays after the</p> <p>8 transaction, correct?</p> <p>9 A. I have not seen this document. I</p> <p>10 don't know what this is in terms of the equity</p> <p>11 line.</p> <p>12 Q. Well, if the equity line is meant to</p> <p>13 indicate the equity to Barclays in the amount of</p> <p>14 3.380, given what we've talked about about the</p> <p>15 deal being in balance --</p> <p>16 A. I didn't create the document. I've</p> <p>17 never seen the document before.</p> <p>18 Q. I understand.</p> <p>19 A. I prefer not to interpret it.</p> <p>20 MR. BUCKLEY: Let the witness answer.</p> <p>21 A. I prefer not to interpret it. I don't</p> <p>22 know what it means.</p> <p>23 Q. If there were an equity component in</p> <p>24 the deal on the opening day, sir, of \$3.38</p> <p>25 billion, that deal would not be in balance; is</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 that right?</p> <p>3 MR. BUCKLEY: Objection to form and</p> <p>4 foundation.</p> <p>5 A. That's correct.</p> <p>6 Q. And the deal that you made was one to</p> <p>7 be in balance; is that right?</p> <p>8 MR. BUCKLEY: Objection.</p> <p>9 MR. HUME: Objection. Vague and</p> <p>10 ambiguous.</p> <p>11 A. That's correct.</p> <p>12 Q. So if the opening day balance sheet</p> <p>13 for the deal reflected that Barclays had \$3.38</p> <p>14 billion in equity, that's not the deal you made,</p> <p>15 is it?</p> <p>16 MR. HUME: Objection to form and calls</p> <p>17 for a legal conclusion.</p> <p>18 MR. BUCKLEY: Objection. Foundation.</p> <p>19 A. That's correct.</p> <p>20 Q. And it wouldn't be consistent with the</p> <p>21 deal that you made, would it?</p> <p>22 A. It would not be consistent, that's</p> <p>23 correct.</p> <p>24 Q. Now, was there ever a time, sir,</p> <p>25 where -- at around the time of the hearing</p>

Page 218

1 HIGHLY CONFIDENTIAL - B. McDADE
2 where, to your knowledge --

3 A. Which hearing?

4 Q. Good point. The hearing at which you
5 testified on the 19th, the Friday sale hearing.
6 For time periods that's where this question goes
7 to.

8 Before that hearing, sir, do you have
9 any knowledge of a project where Alex Kirk
10 suggested that fire sale liquidation prices be
11 calculated for the -- for a list of the top 100
12 positions in each of the different categories?

13 A. I don't know -- I don't have knowledge
14 of a fire sale process, no.

15 Q. Let me show you what's previously been
16 marked as Exhibit 3. Ask you to take a look
17 through that e-mail, and just for purposes of
18 your review, sir, take note that you're at least
19 shown as one of the CCs on this.

20 A. Uh-huh.

21 Q. Let me know what you've had a chance
22 to look through the document, sir.

23 A. I'm good.

24 Q. Now, the document addressed to Kaushik
25 Amin, Charlie Spero, Eric Felder and Gerald

Page 219

1 HIGHLY CONFIDENTIAL - B. McDADE

2 Donini recounts that Alex Kirk -- "Alex Kirk
3 suggested we contact each of you to help us
4 understand on a theoretical basis what would
5 happen in a fire sale liquidation of the
6 securities that are being transferred to
7 Barclays as part of the proposed transaction.
8 The question is what these securities could be
9 sold for in such a scenario. We will be leaving
10 on your desks a list of the top 100 positions in
11 each of your areas of expertise. The pages you
12 need to look at will be flagged. We need to get
13 your views on this by no later than 11 A.M.
14 tomorrow. The court hearing is at 4 P.M. and
15 Bart and Lazard need to have their testimony
16 ready several hours prior to that. We will
17 follow up with each of you in the morning." And
18 then, "Please do not hesitate to contact me," et
19 cetera.

20 Having looked through this, was there
21 any discussion that your testimony might address
22 fire sale prices for securities?

23 A. No.

24 Q. Any recollection of this at all?

25 A. My -- my testimony? I'm sorry.

Page 220

1 HIGHLY CONFIDENTIAL - B. McDADE

2 Q. My question derives from the document,
3 where there's this instruction appears to be
4 given and the note is made that the court
5 hearing is at 4 P.M. and Bart and Lazard need to
6 have their testimony ready.

7 A. Right.

8 Q. Do you have any knowledge, sir, of a
9 connection between the need for fire sale
10 prices?

11 A. I was obviously CC'd, but I don't know
12 the context of how Daniel spoke to Alex. I
13 don't have any of the specific recollection of
14 this e-mail.

15 Q. Okay. We've been doing this long
16 enough today I can just do it this way: Is
17 there anything you can add about the topic of
18 this e-mail?

19 A. There's nothing I would add.

20 Q. Showing you, sir, what previously has
21 been marked as Exhibit 221, an e-mail from you
22 to Ian Lowitt with a prior e-mail below that.
23 Take look through that, please.

24 A. Okay.

25 Q. Do you recall this e-mail?

Page 221

1 HIGHLY CONFIDENTIAL - B. McDADE

2 A. Yes.

3 Q. And in the earliest of them at 1:02
4 A.M. on the 20th of September, you recount to
5 Mr. Lowitt, "The conflate is over. We are part
6 of BarCap subject to documenting"?

7 A. Uh-huh.

8 Q. I take it this was sent shortly after
9 the hearing finally had ended in the early
10 morning hours of September 20?

11 A. That's correct.

12 Q. And Mr. Lowitt responds by asking in
13 his e-mail to you, Berkenfeld and Tonucci, "Did
14 the court accept the 15c3 lockup and
15 unencumbered box make it through to BarCap? If
16 so, we need to make sure documentation is very
17 tight so we can deliver on it. Should have Weil
18 lawyers work closely with Paolo on it.
19 Obviously critical we get this right. Congrats
20 again. Ian."

21 Did you have an understanding of what
22 Mr. Lowitt was asking you about when he asked if
23 the court accepted the 15c3 lockup and
24 unencumbered box in BarCap?

25 A. I did not have an understanding of

Page 222

1 HIGHLY CONFIDENTIAL - B. McDADE
2 what he was specifically asking in that.
3 Q. It's some reference to the project on
4 Friday to find added value, yes?
5 A. Yes.
6 Q. And those were the categories in which
7 the added value was found?
8 A. Correct.
9 Q. Had you had any discussions with
10 Mr. Lowitt about bringing to the court's
11 attention these particular --
12 A. No.
13 Q. -- additional assets?
14 A. Absolutely not.
15 Q. Do you know if they were brought to
16 the court's attention?
17 A. In a specific way they were not
18 brought to the court's attention.
19 Q. And your final e-mail from you to
20 Lowitt, "Can you call me at home?" Did you have
21 a conversation with Mr. Lowitt that -- I guess
22 in that early morning?
23 A. So I don't know the times of these. I
24 don't recall a specific conversation with Ian.
25 I spent all day Sunday with him back at Weil.

Page 224

1 HIGHLY CONFIDENTIAL - B. McDADE
2 a deal.
3 Q. You were in the middle of a deal and
4 he was playing a fairly critical role in --
5 A. I have described the role that he was
6 playing.
7 Q. Would it be fair to describe it as a
8 fairly critical role?
9 A. He was playing an important role.
10 Q. Who conveyed to Barclays the news that
11 Mr. Shafir had left?
12 A. I don't know that answer.
13 Q. I take it by your answer that means it
14 wasn't you?
15 A. I don't recall doing that.
16 Q. Had there been particular people at
17 Barclays for whom Shafir was the contact point?
18 A. I described earlier I think Shafir and
19 Mike Klein, the advisor to BarCap, were -- were
20 their prospective contact points, but we were
21 all living together, so ...
22 Q. Okay.
23 A. It's not like it was a remote set of
24 discussions going on. Everyone was together,
25 so...

Page 223

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. You know, I think that my question may
3 have been misleading, and I apologize. I had
4 not noticed this.
5 Take a look at the time and date of
6 the top e-mail and note that it's GMT, so
7 subtract four hours. So we're on -- now we're
8 on Saturday night when you say, "Can you call me
9 at home?"
10 A. And we lived together all day Sunday.
11 Q. So that could have been any one of any
12 number of calls between you?
13 A. Right.
14 Q. Is there any particular topic you were
15 asking him to call you at home about?
16 A. I don't recall.
17 Q. I'd like to just return briefly to
18 Mr. Shafir's departure from the scene on
19 Thursday. Was that a surprise to you, sir?
20 A. Yes, it was.
21 Q. Why were you surprised at that?
22 A. Well, number one, it was new
23 information; number two, competitive instincts,
24 you never like to lose good employees; and,
25 number three, obviously we were in the middle of

Page 225

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. I guess I'm working on the assumption
3 that somebody on the BarCap side of things would
4 have noticed Mr. Shafir was missing. Did
5 anybody ask where did Shafir go?
6 A. Again, I wasn't there in the process.
7 I was informed, I believe, by Skip McGee, as
8 I've said before. I am sure Mr. Shafir had the
9 professional courtesy, but I don't have specific
10 knowledge of, to speak to the proper
11 counterparts at Barclays. I'm sure as soon as
12 we at Lehman knew the BarCap team you knew.
13 Q. With Shafir's departure on the
14 Thursday, was there any, you know, was there any
15 learning curve, was there anybody who had to
16 pick up what Shafir had been doing, learn what
17 Shafir knew?
18 A. No, because while the deal specifics
19 changed in terms of the detail, the general
20 nature of the deal had been accomplished earlier
21 on in the week and there were many, many
22 advisors, internal and external, that had been
23 and had become part of the process over the
24 course of the week.
25 Q. Okay. There is a continuum, I guess,

Page 226

1 HIGHLY CONFIDENTIAL - B. McDADE
2 between graveyards that are full of
3 indispensable people and people are
4 indispensable. But Shafir plays an important
5 role in this deal.

6 On Thursday night, you got --

7 MR. BUCKLEY: Is that a question or a
8 statement you're making?

9 MR. GAFFEY: That's a statement I'm
10 making.

11 Q. On Thursday night, you call Kirk and
12 ask him to come in and help get involved on
13 Friday. Prior to Thursday night, Kirk had been
14 managing credit risk, not involved in the deal.

15 Was Kirk meant to replace Shafir in
16 the primary deal team?

17 A. No.

18 Q. Does anybody download to Kirk what it
19 was Shafir was doing or Shafir knew or was
20 responsible for in the deal?

21 A. Kirk was working on specifics related
22 to accomplishing the finality of determining the
23 value of the assets.

24 Q. Prior to his departure, had anyone --

25 A. Prior to whose departure? Shafir?

Page 227

1 HIGHLY CONFIDENTIAL - B. McDADE

2 Q. Shafir's departure.

3 Had anyone had a conversation with
4 Shafir about this, about Barclays allowing as to
5 how they weren't getting the value that they
6 thought they were getting, the reason for the
7 Friday project?

8 A. I don't know the answer. He was no
9 longer an employee, but I don't know the answer.

10 Q. Did you ever talk to Shafir after he
11 departed on Thursday, September 18?

12 A. One time he called me.

13 Q. When did he call you?

14 A. I don't recall. Soon thereafter.

15 Q. Soon thereafter.

16 And do you recall what the
17 conversation was between you and Shafir when he
18 called you?

19 A. He thanked me for our professional
20 relationship.

21 Q. Were you angry when Shafir left on
22 such short notice in the middle of the deal?

23 A. It was frustrating, yes. I had
24 different forms of -- of challenges over the
25 course of the couple months, so it was par for

Page 228

1 HIGHLY CONFIDENTIAL - B. McDADE
2 the course.

3 Q. Did the departure of Shafir add to
4 the -- to confusion about the deal?

5 A. No, it did not, not in my opinion, no.

6 Q. Did the departure of Shafir present
7 additional challenges to completing the deal?

8 A. I -- I remain with the same set of
9 statements that we were adequately womaned and
10 manned in terms of the right type of personnel
11 to be able to, internal to Lehman and external,
12 to be able to process responsibly and
13 accurately.

14 Q. After Shafir left, who dealt with
15 Klein?

16 A. A combination -- a combination of a
17 number of us dealt with Klein. Myself, Kirk,
18 Paul Parker, investment banking, M&A, other
19 financial institutions' bankers. A number of
20 people.

21 Q. What issues were left to be discussed
22 with Klein after Shafir's departure?

23 A. Well, after Shafir's departure, the
24 challenge of the change in the mix that we had
25 spoken to in terms of the balance sheet, the

Page 229

1 HIGHLY CONFIDENTIAL - B. McDADE
2 need in processing of the different assets that
3 we have talked about this morning, those would
4 have been the basic challenges of getting a deal
5 done.

6 Q. Prior to his departure, had Shafir
7 played any role in this process of valuing the
8 different assets we talked about this morning?

9 A. Of valuing the assets?

10 Q. Yes.

11 A. No.

12 Q. Prior to his departure, had Shafir
13 played any role in determining the nature of
14 the -- the composition of the assets that were
15 going to go to Barclays?

16 A. The composition of the assets?

17 Q. Yes, what Barclays was going to get.

18 A. He would have been involved in
19 developing a framework and construct in terms of
20 how the deal was coming together, but he didn't
21 grow up in risk management. He wouldn't have
22 known what the assets were worth that could
23 constitute good assets to be purchased. That
24 would not have been his role.

25 Q. Did you ever have any conversations

Page 230

1 HIGHLY CONFIDENTIAL - B. McDADE
2 with Mr. Shafir where he indicated that in his
3 view the deal had changed from a -- it was a
4 completely different deal from the one made on
5 Tuesday?
6 A. I never had those conversations, no.
7 Q. When you spoke to Shafir shortly after
8 the deal, was that the first time you spoke to
9 him after his -- is that the only time you spoke
10 to him after his departure?
11 A. Best of my recollection, yes.
12 Q. Did you ask him why he left in the
13 middle of the deal?
14 A. I don't recall the actual
15 conversation, so I can't answer that question.
16 Q. Do you know if anyone on your team at
17 Lehman ever asked Shafir why he left in the
18 middle of the deal?
19 A. I do not -- I do not know.
20 Q. Did you ask anyone else on the team if
21 they knew why Shafir left in the middle of the
22 deal?
23 A. Absolutely.
24 Q. Who did you ask?
25 A. Skip McGee.

Page 232

1 HIGHLY CONFIDENTIAL - B. McDADE
2 other than your conversation with McGee, about
3 why Shafir left before the deal got done?
4 A. That we were too focused on the deal.
5 So, no, I do not recall that.
6 MR. GAFFEY: I don't have anything
7 further. Thanks. Thanks for your time. My
8 friends may have some questions for you,
9 though.
10 THE WITNESS: Understood.
11 EXAMINATION BY
12 MS. TAGGART:
13 Q. I have a few. Can you hear me okay
14 from here?
15 A. Yes, I can.
16 MR. BUCKLEY: Who are you? Who do you
17 represent?
18 Q. My name is Erica Taggart and I
19 represent the Creditors Committee.
20 First thing, I want to ask you some
21 questions about residential mortgage-backed
22 securities, and to put a little context, if you
23 look at Exhibit 1, which is the Asset Purchase
24 Agreement, page 3, and there's a subsection K, I
25 believe this is the section discussing excluded

Page 231

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. What did Skip McGee say to you?
3 A. He said he stayed to get the deal
4 done. He wanted to do this, apparently, for a
5 long time.
6 Q. Was the deal done on Thursday,
7 September 18?
8 A. The deal obviously wasn't completely
9 contemplated -- consummated, no.
10 Q. So when McGee told you that Shafir had
11 said he wanted to get the deal done, did you
12 comment on the fact that Shafir left before that
13 happened?
14 A. I don't recall the specifics of the
15 conversation other than me asking and McGee
16 giving that answer.
17 Q. Do you remember McGee saying anything
18 else about why Shafir left before the deal got
19 done?
20 A. No, I do not.
21 Q. Other than McGee, did you talk to
22 anyone about the fact that Shafir left before
23 the deal got done?
24 A. Not that I recall.
25 Q. Do you recall hearing anybody talk,

Page 233

1 HIGHLY CONFIDENTIAL - B. McDADE
2 assets, there's a discussion of 50 percent of
3 each position, residential real estate mortgage
4 securities, and also on page 6 of this document
5 under Purchased Assets, subsection E, there's 50
6 percent of each position, the residential real
7 estate mortgage securities.
8 Were you involved in negotiations at
9 all related to any amount of residential
10 mortgage-backed securities going to Barclays as
11 part of the deal?
12 A. Yes, from a top-down point of view, I
13 was involved. Originally, Barclays wanted none
14 of the mortgage securities consistent with the
15 weekend before view on certain challenges that
16 they had with their own concentrations and
17 capital, et cetera. So there was a strong
18 negotiation on our part to continue to push to
19 include those illiquid assets in the deal.
20 But the role I would have had would
21 have been continuing to push the process which
22 ultimately did change in the inclusion of those
23 assets.
24 Q. Did you speak personally to someone at
25 Barclays about the issue?

<p style="text-align: right;">Page 234</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I spoke personally to Rich Ricci and</p> <p>3 to Jerry del Missier and the senior deal team.</p> <p>4 I did not speak to the senior individuals</p> <p>5 involved in the mortgage risk and</p> <p>6 decision-making at the risk level of Barclays.</p> <p>7 Q. And what did those individuals at</p> <p>8 Barclays that you spoke of say why they did not</p> <p>9 want to include the residential mortgage</p> <p>10 securities?</p> <p>11 A. Right, they didn't want to include</p> <p>12 residential mortgages, one, because of the</p> <p>13 illiquid nature of them; two, because of the</p> <p>14 capital-intensive nature of apparently their</p> <p>15 need to account for those type of assets; and my</p> <p>16 estimation as well just that the concentration</p> <p>17 of that type of asset being looked at unkindly</p> <p>18 by the marketplace, to say the least.</p> <p>19 Q. And how did it come about that some of</p> <p>20 those, at least some, residential</p> <p>21 mortgage-backed securities were included let's</p> <p>22 start in the original agreement, the APA?</p> <p>23 A. That was part of the negotiation</p> <p>24 process of at least Barclays meeting us halfway</p> <p>25 in terms of our position that mortgages should</p>	<p style="text-align: right;">Page 235</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 be included.</p> <p>3 Q. And what was your position about why</p> <p>4 they should be included?</p> <p>5 A. There was -- I had two reasons:</p> <p>6 Number one, it was, again, very challenging for</p> <p>7 us to manage any of the assets, especially the</p> <p>8 most illiquid assets, residential mortgages</p> <p>9 being more illiquid than some of the other</p> <p>10 assets on the balance sheet, one; and two, it</p> <p>11 would, you know, be important in terms of the</p> <p>12 overall -- so the fundamental thrust was the</p> <p>13 reduction of the risk to the Lehman estate and</p> <p>14 from point of view of the mechanics of being</p> <p>15 able to manage if businesses -- we had a</p> <p>16 responsibility, if businesses were being assumed</p> <p>17 by Barclays, those resident experts that we had</p> <p>18 at Lehman would potentially be going over to</p> <p>19 Barclays wouldn't be able to manage the risks.</p> <p>20 So a responsibility around they would be taking</p> <p>21 the individuals, they had to understand the</p> <p>22 burden that that would put Lehman under.</p> <p>23 Q. If you look at Exhibit 19, which I</p> <p>24 think is the schedule that was referred to in</p> <p>25 the APA.</p>
<p style="text-align: right;">Page 236</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Right.</p> <p>3 Q. In this schedule, does it include the</p> <p>4 mortgage-backed securities that were subject of</p> <p>5 those negotiations?</p> <p>6 A. Mortgages.</p> <p>7 Q. And this 2.7, what does that reflect?</p> <p>8 A. That reflects the bottoms-up process</p> <p>9 between the two deal teams in terms of the 50</p> <p>10 percent, the original 50 percent value of the</p> <p>11 residential mortgages.</p> <p>12 Q. So this 2.7 is, first of all, it's 50</p> <p>13 percent of the total mortgage-backed securities</p> <p>14 that Lehman had at the time?</p> <p>15 A. To the best of my recollection, yes.</p> <p>16 Q. And if you look back at the APA page</p> <p>17 6, under Purchased Assets, if you look at</p> <p>18 subsection D, it's describing government</p> <p>19 securities, commercial paper, corporate debt --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- corporate equity and some other</p> <p>22 things of the approximately \$70 billion in</p> <p>23 value. Do you know if that includes value that</p> <p>24 was part of residential mortgage-backed</p> <p>25 securities?</p>	<p style="text-align: right;">Page 237</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I believe residential mortgages were</p> <p>3 included in E because of the specific nature of</p> <p>4 the split.</p> <p>5 Q. Okay. So the 70 billion that's the</p> <p>6 estimate in Purchased Assets, subsection D, does</p> <p>7 not include the value of the assets that were in</p> <p>8 these resis; is that right?</p> <p>9 A. Which trues up the math to the 72.7,</p> <p>10 which is the total, exactly.</p> <p>11 Q. Could you explain that?</p> <p>12 A. So the 70 billion in line D plus the</p> <p>13 2.7 in mortgages gets to the actual figure you</p> <p>14 see in Exhibit 19 of 72.65.</p> <p>15 Q. Now, subsequent to that, was there a</p> <p>16 change in the decision about how much of the</p> <p>17 residential mortgage securities would go to</p> <p>18 Barclays?</p> <p>19 A. Yes.</p> <p>20 Q. And how did that change?</p> <p>21 A. It was part of the repo that</p> <p>22 ultimately was -- part of the decision was based</p> <p>23 on negotiation and part of it was the repo</p> <p>24 transaction. Barclays actually ended up with</p> <p>25 more of those assets already assumed in the repo</p>

Page 238

1 HIGHLY CONFIDENTIAL - B. McDADE
2 transaction.
3 Q. First, let's look at on the First
4 Amendment to the Asset Purchase Agreement, and
5 that's Exhibit 24, and in particular, now you
6 see under number 3, Purchased Assets, says,
7 "Cause E of the definition of Purchased Assets
8 in the original agreement is hereby amended to
9 delete 50 percent and to insert 100 percent in
10 lieu thereof."
11 A. Uh-huh.
12 Q. First of all, were you involved in the
13 negotiation of that change?
14 A. I was involved again only at a high
15 level, but yes.
16 Q. Did you speak with anyone at Barclays
17 about that change?
18 A. It's likely that we ratified that
19 change at our level.
20 Q. And what was the reason for the change
21 between the time of the APA and the first
22 amendment to change that to be 100 percent of
23 the residential real estate mortgage securities?
24 A. I think, as I -- I think I previously
25 stated, a combination of our need to find

Page 240

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. Now, you say that you didn't give, you
3 agreed to sell. Was there any specific
4 counterbalance in what -- in the deal to reflect
5 that now Barclays was going to receive all of
6 the mortgages?
7 A. Any given counterbalance?
8 Q. What did you sell them for?
9 A. We sold them for the proceeds. We
10 sold them for whatever the valuation process of
11 the two deal teams had put together.
12 Q. I guess regarding this particular
13 change for the -- from 50 percent to 100
14 percent, was there any counterbalancing change
15 that was made to the deal in assumption of
16 liabilities or more that Barclays had to pay?
17 A. I understand your question in a
18 vacuum, but the deal was changing and the assets
19 were changing, so I can't answer the question
20 specifically because so many moving pieces in
21 terms of the balance sheet was taking place.
22 Q. But it was your understanding that
23 there was some change that would have been
24 reflected to Barclays in order to keep those in
25 balance so that Barclays would give more or

Page 239

1 HIGHLY CONFIDENTIAL - B. McDADE
2 responsible risk managers at Lehman, the change
3 in the -- the change in the overall dynamic of
4 the marketplace, the change in the assets, it
5 became clear that it would be a whole lot more
6 efficient ultimately for all parties for all the
7 assets to be included.
8 Q. At the time of when you decided to
9 give 100 percent of the residential real estate
10 mortgage securities, did you have an estimate at
11 that time of what the value of that hundred
12 percent of those securities were worth?
13 A. I'm sure we did. I did not have that
14 specific value. We didn't give. We sold. We
15 agreed to sell the residential mortgage assets.
16 Q. Do you know if it was more or less
17 than two times the 2.7 billion that's reflected
18 in Exhibit 19?
19 A. I don't have the specifics.
20 Q. Do you know if the value had changed
21 of those mortgage securities in the time between
22 the APA and that First Amendment?
23 A. I am sure the value changed given what
24 was happening in the market, but I don't have
25 the specifics.

Page 241

1 HIGHLY CONFIDENTIAL - B. McDADE
2 receive less to keep it in balance after this
3 change?
4 A. It's my understanding that Lehman got
5 value for those assets in a properly -- in a
6 proper process, as described.
7 Q. Do you know who would know what value
8 was attributed to these residential securities
9 in order to make sure that it continued to be
10 balanced?
11 A. On the Lehman side, that would have
12 been Charlie Spero, who would have spearheaded
13 our efforts.
14 Q. Did you speak with Charlie Spero about
15 the value of those mortgage securities?
16 A. I did not speak directly to Charlie.
17 I'm sure Michael Gelband did.
18 Q. Now, at the time of the First
19 Amendment to the Asset Purchase Agreement, was
20 it already decided that Barclays would enter
21 into the repo with the Fed?
22 A. The First Amendment I believe is dated
23 the 19th, and I believe the Fed transaction with
24 Barclays took effect late in the evening on the
25 18th. So, yes.

Page 242	Page 243
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Let's start with were any real estate</p> <p>3 mortgage securities included in the collateral</p> <p>4 that had been pledged to the Fed?</p> <p>5 MR. HUME: Objection. Lack of</p> <p>6 foundation.</p> <p>7 A. I don't know the specifics of the</p> <p>8 exact collateral pledged to the Fed.</p> <p>9 Q. Do you know if any residential real</p> <p>10 estate mortgage securities ultimately were</p> <p>11 transferred to Barclays at the end of the deal?</p> <p>12 A. It's my understanding, yes.</p> <p>13 Q. What's that understanding based on?</p> <p>14 A. My understanding is based -- my</p> <p>15 understanding is based on our inability to</p> <p>16 transact much in the way of those assets over</p> <p>17 that period of week in terms of what market</p> <p>18 activity. So those balance -- those balances</p> <p>19 and those assets would have been there and those</p> <p>20 balances were part of the transaction.</p> <p>21 Q. Did you ever have a specific</p> <p>22 conversation or communication with anyone that</p> <p>23 confirmed, yes, the real estate mortgage</p> <p>24 securities have now gone to Barclays?</p> <p>25 A. Did I ever have a specific</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 conversation? No.</p> <p>3 Q. And you may have already answered</p> <p>4 this, but do you have any understanding today</p> <p>5 about what value Barclays got as a result of</p> <p>6 these residential real estate mortgage</p> <p>7 securities?</p> <p>8 A. I don't have a specific figure.</p> <p>9 Q. I also want to talk about the process</p> <p>10 about this coming up with a \$5 billion price,</p> <p>11 which I know was described quite a bit this</p> <p>12 morning and don't need to restate all that now,</p> <p>13 but one thing that you had mentioned is that</p> <p>14 there was a back and forth about the price.</p> <p>15 Barclays probably wanted to pay less and get</p> <p>16 more and Lehman wanted to get more and not pay</p> <p>17 as much.</p> <p>18 Was there ever a time -- well, first</p> <p>19 of all, did you actually speak with someone at</p> <p>20 Barclays where the number 5 billion was ever</p> <p>21 mentioned?</p> <p>22 A. No.</p> <p>23 MR. BUCKLEY: Objection to the</p> <p>24 question.</p> <p>25 A. No, the number 5 billion is not my</p>
Page 244	Page 245
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 number. It's not a number that we used in the</p> <p>3 process. We went through a process of valuing</p> <p>4 assets from Monday midday all the way through to</p> <p>5 the final consummated transaction, and that \$5</p> <p>6 billion figure was simply the different at the</p> <p>7 end of the day in terms of day for the initial</p> <p>8 balance sheet from where the marks were on</p> <p>9 Friday. There was no concept of a discount, and</p> <p>10 there was -- there was the same process we went</p> <p>11 through over the course of the week.</p> <p>12 Q. Who did you speak with about this</p> <p>13 difference between the price that they would pay</p> <p>14 and the marks that it's your understanding where</p> <p>15 the marks that were on Friday?</p> <p>16 A. Who did I --</p> <p>17 MR. BUCKLEY: Would you specify which</p> <p>18 Friday we're talking about, if you would?</p> <p>19 Q. Okay. Who if anyone did you ever</p> <p>20 speak about about this \$5 billion difference</p> <p>21 between a price and marks?</p> <p>22 MR. BUCKLEY: Price on Friday, the</p> <p>23 12th?</p> <p>24 Q. The price that is --</p> <p>25 MR. BUCKLEY: Or the marks?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. -- discussed on the APA -- that are</p> <p>3 reflected in the APA.</p> <p>4 A. The main individual that I would have</p> <p>5 spoken to at Lehman with respect to the whole of</p> <p>6 the risk process and the valuation process from</p> <p>7 the beginning to the end would have been Michael</p> <p>8 Gelband, who had collective responsibility for</p> <p>9 all of the businesses with the exception of the</p> <p>10 principal businesses, which was Alex Kirk, which</p> <p>11 were not part of broker-dealer assets. The bulk</p> <p>12 of his risk responsibilities were not part of</p> <p>13 the broker-dealer assets. So it would have been</p> <p>14 Michael Gelband, to answer your question.</p> <p>15 Did I speak to any of the other risk</p> <p>16 operators that have been mentioned today, Gerry</p> <p>17 Donini in equities, and Eric Felder in credit</p> <p>18 and Charlie Spero, possibly on occasion in terms</p> <p>19 of making sure I understood their process, if</p> <p>20 they needed help, et cetera, yes, but my main</p> <p>21 point of contact would have been Michael</p> <p>22 Gelband.</p> <p>23 Q. And do you actually remember a</p> <p>24 conversation with Michael Gelband where the</p> <p>25 number 5 billion came up?</p>

Page 246	Page 247
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. No, I don't remember a conversation</p> <p>3 with Mike Gelband where the number 5 billion --</p> <p>4 Q. Do you remember a conversation with</p> <p>5 Mike Gelband in particular about the difference</p> <p>6 between the numbers that were reflected on</p> <p>7 Exhibit 19 and numbers that were reflected on</p> <p>8 Lehman's books?</p> <p>9 A. Our specific focus was getting the</p> <p>10 best possible execution. I remember -- I have</p> <p>11 no recollection of any conversation with respect</p> <p>12 to the books on Friday and the market prices</p> <p>13 reflected in the 5 billion figure that you</p> <p>14 suggest.</p> <p>15 I recall many conversations with</p> <p>16 respect to the valuation process, what are we</p> <p>17 doing, how are we doing it, and how are we</p> <p>18 making sure that we're getting the best possible</p> <p>19 execution in terms of those -- valuing those and</p> <p>20 transacting those assets.</p> <p>21 Q. Do you remember speaking with anyone</p> <p>22 about the topic of whether the marks were marks</p> <p>23 that were done on Friday and not after that?</p> <p>24 MR. BUCKLEY: Could we please have</p> <p>25 clarification what Friday we're talking</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 about here?</p> <p>3 MS. TAGGART: Sure, that's Friday the</p> <p>4 12th.</p> <p>5 Q. I guess I should ask you. We talked</p> <p>6 today about the difference between the prices</p> <p>7 that are reflected on Exhibit 19 and the marks</p> <p>8 on Lehman's books. What is your understanding</p> <p>9 of when the time that the marks had been done</p> <p>10 that you're using for that comparison?</p> <p>11 A. Again, I think I've answered the</p> <p>12 question today. I think I've answered the</p> <p>13 question today. I don't have the specific</p> <p>14 knowledge of when the marks were done. We were</p> <p>15 going through a process of valuing the assets</p> <p>16 for the transaction over the course of the week,</p> <p>17 those assets changed in terms of composition</p> <p>18 over the course of the week, and that was done</p> <p>19 in iterative times.</p> <p>20 Q. I guess, and I know I'm looking at my</p> <p>21 notes from this morning, but I have something</p> <p>22 about that there was a price that was different</p> <p>23 because there were marks changed from the marks</p> <p>24 on the books since Friday?</p> <p>25 A. Right.</p>
Page 248	Page 249
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Did you speak with anyone about that</p> <p>3 the marks that were used to calculate the</p> <p>4 difference were marks that were done on Friday,</p> <p>5 and not after that?</p> <p>6 A. I understood the last time that we</p> <p>7 were able to mark our books was September 12th</p> <p>8 in the evening.</p> <p>9 Q. Where does that understanding -- I'm</p> <p>10 sorry. Continue.</p> <p>11 A. I understood that given that the</p> <p>12 carnage, human carnage that had taken place in</p> <p>13 terms of what happened at Lehman and our</p> <p>14 inability on Monday to really operate and</p> <p>15 function in any real capacity until life came</p> <p>16 back to the organization because of the</p> <p>17 potential of a BarCap deal.</p> <p>18 So all I understood was we had marked</p> <p>19 on Friday, it would have been impossible to mark</p> <p>20 on Monday, and this balance sheet, Exhibit 19,</p> <p>21 reflected the bottoms-up process between the two</p> <p>22 collective teams.</p> <p>23 Q. Did you actually speak to somebody</p> <p>24 where the topic that someone said Lehman was</p> <p>25 unable to mark on Monday, that topic was</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 discussed?</p> <p>3 A. I don't recall the specific</p> <p>4 conversation about that.</p> <p>5 Q. Did you speak to any trader about</p> <p>6 whether they had marked the books on Monday?</p> <p>7 A. I would speak to individual business</p> <p>8 heads, not individual traders in the normal</p> <p>9 course of business, and it became clear that</p> <p>10 that would be -- have been impossible to do.</p> <p>11 Q. What did they say and who said in</p> <p>12 particular something that made you think it was</p> <p>13 impossible to do?</p> <p>14 A. "There's nobody on the interest rate</p> <p>15 trading desk today."</p> <p>16 Q. Who said that?</p> <p>17 A. I don't know. I'm using an example of</p> <p>18 what would be communicated early on on Monday as</p> <p>19 everyone had left the building. So, therefore,</p> <p>20 I put two and two together. We did not</p> <p>21 specifically talk about the mark process, to</p> <p>22 answer your question specifically.</p> <p>23 Q. Okay. And did you ever actually see</p> <p>24 the document or computer system that showed</p> <p>25 there hadn't been marks on Monday?</p>

<p style="text-align: right;">Page 250</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. I would never see those documents, no.</p> <p>3 Q. Is it your understanding that Barclays</p> <p>4 had wanted to ascribe even lower value to these</p> <p>5 assets than is reflected on Exhibit 19?</p> <p>6 A. Very much so.</p> <p>7 Q. How much lower did they want to go?</p> <p>8 A. I wasn't part of the individual</p> <p>9 conversations where the valuing was taking</p> <p>10 place, so I can't give you a frame of reference.</p> <p>11 Q. Then where does your understanding</p> <p>12 that very much so Barclays actually was trying</p> <p>13 to get an even lower attribution of the value of</p> <p>14 the assets than they were getting?</p> <p>15 A. It comes, one, from the, again, the</p> <p>16 liaison that I had, Michael Gelband, in terms of</p> <p>17 just general me getting a general update in</p> <p>18 terms of how that process is going; and, two, it</p> <p>19 just comes from my set of market experiences</p> <p>20 knowing all of the markets had shut down.</p> <p>21 So for an individual organization to</p> <p>22 take on the risk of a balance sheet of this</p> <p>23 size, intuitively, they would -- they would be</p> <p>24 pushing for an efficient, translation, low</p> <p>25 execution.</p>	<p style="text-align: right;">Page 251</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Did Mike Gelband tell you that someone</p> <p>3 at Barclays had said that they needed a change</p> <p>4 because of what you just described, because of</p> <p>5 the market shutdown?</p> <p>6 A. No.</p> <p>7 Q. Okay. That was your understanding of</p> <p>8 what logically might be taking place?</p> <p>9 A. Correct.</p> <p>10 Q. And you also mentioned that you</p> <p>11 thought that, at some point I think you said --</p> <p>12 let me just strike that.</p> <p>13 Do you believe that Exhibit 19, the</p> <p>14 values attributed to the assets, were the fair</p> <p>15 market value of those assets at the time?</p> <p>16 A. At that time, yes, I do.</p> <p>17 Q. And so is it your belief that the</p> <p>18 value of these assets had gone down \$5 billion</p> <p>19 from the Friday, September 12th, and September</p> <p>20 16th?</p> <p>21 A. If the 5 billion represents where the</p> <p>22 marks were, and I believe that we marked fairly</p> <p>23 on Friday, yes, I believe we -- I believe we</p> <p>24 marked fairly on -- the process came up with a</p> <p>25 fair market valuation on Tuesday, and I believe</p>
<p style="text-align: right;">Page 252</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 at the close of business on Friday we had marked</p> <p>3 our books appropriately into the market.</p> <p>4 Q. When you say "we had marked our books</p> <p>5 appropriately," what are you referring to?</p> <p>6 A. You asked me about the \$5 billion</p> <p>7 figure, I think, in your question.</p> <p>8 Q. Right. Yes.</p> <p>9 A. I'm just saying that our</p> <p>10 responsibility was to mark our books to market</p> <p>11 each evening.</p> <p>12 Q. Right.</p> <p>13 A. On Friday, September 12, we had done</p> <p>14 that. You then pointed out that the price on</p> <p>15 Exhibit 19 happens to be \$5 billion difference.</p> <p>16 I'm suggesting that we went through a thorough</p> <p>17 process in terms of getting to the place on</p> <p>18 September 16th where this reflected the fair</p> <p>19 market value. So, therefore, I viewed it to be</p> <p>20 fair on Friday and fair on Tuesday, and so that</p> <p>21 would reflect the 5 billion change in terms of</p> <p>22 the process.</p> <p>23 Q. Is there any difference in your</p> <p>24 understanding of fair market value and the price</p> <p>25 that these would be marked on that day?</p>	<p style="text-align: right;">Page 253</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. There's a -- again, the ability to</p> <p>3 value and transact in this type of size did not</p> <p>4 exist in the marketplace.</p> <p>5 Q. So what do you mean when you say "fair</p> <p>6 market value"?</p> <p>7 A. Ability to transact -- the ability to</p> <p>8 transact securities of a normal lot size in the</p> <p>9 marketplace is typically what's described as</p> <p>10 fair market value.</p> <p>11 Q. And sorry, maybe I misunderstood your</p> <p>12 answer, but is that then different between what</p> <p>13 would be marked if they had marked the books on</p> <p>14 what -- how they could sell those assets on that</p> <p>15 day in the market; is that different than what</p> <p>16 you're describing as fair market value?</p> <p>17 A. No financial institution marks its</p> <p>18 books at the close of the evening, mutual funds,</p> <p>19 to where they can liquidate that entire</p> <p>20 portfolio that evening.</p> <p>21 Q. Is that what you're describing as fair</p> <p>22 market value, is the amount to liquidate those</p> <p>23 assets that evening?</p> <p>24 A. No, our transaction reflected the</p> <p>25 ability to eliminate all of the assets over the</p>

Page 254	Page 255
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 course of this transaction.</p> <p>3 Q. Looking in particular at the assets</p> <p>4 listed on Exhibit 19, did the assets listed</p> <p>5 there -- first of all, do you believe they all</p> <p>6 went down in value from Friday, September 12th,</p> <p>7 until the APA was signed on the 16th?</p> <p>8 A. There was -- there was a lot of</p> <p>9 correlation in terms of the asset prices</p> <p>10 changing and all heading down. Do I believe</p> <p>11 they all went down? I would not make that</p> <p>12 statement.</p> <p>13 Q. Do you know if the top one, which I</p> <p>14 think is government and agencies, had gone down</p> <p>15 in value?</p> <p>16 A. It definitely went down in value.</p> <p>17 Q. Do you have any idea of the amount of</p> <p>18 the \$5 billion difference that was attributable</p> <p>19 to the change in value to the government and</p> <p>20 agencies?</p> <p>21 A. I don't have the specific balance</p> <p>22 sheet details in front of me. From my</p> <p>23 recollection, these were not T bills and</p> <p>24 two-year notes in terms of governments and</p> <p>25 agencies that's the bulk of the 40 billion</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 that's described here. So there was a lot of</p> <p>3 agency securities as a percentage of the total</p> <p>4 which were definitely being affected by the</p> <p>5 goings on with Fannie and Freddie all over the</p> <p>6 market.</p> <p>7 So I don't have the specifics to be</p> <p>8 able to answer your question, but I think it's</p> <p>9 fair to say that the majority of the portfolio</p> <p>10 was being negatively affected, but not -- I</p> <p>11 would not answer all.</p> <p>12 Q. Do you know how that \$5 billion</p> <p>13 difference was attributed among these different</p> <p>14 asset classes?</p> <p>15 A. Specifically, no. It was -- the</p> <p>16 process, yes. Specifically, I do not know the</p> <p>17 answer.</p> <p>18 Q. I asked you if Barclays wanted to mark</p> <p>19 these down even lower. Let me ask the other</p> <p>20 side. Did Lehman say that these assets should</p> <p>21 be marked even higher?</p> <p>22 A. I'm not sure what you mean by</p> <p>23 "marked." As it pertains to the deal?</p> <p>24 Q. As it pertains to the deal, did Lehman</p> <p>25 believe that the value attributed to these</p>
Page 256	Page 257
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 assets should be higher than is reflected on</p> <p>3 Exhibit 19?</p> <p>4 A. Clearly we continued to push for what</p> <p>5 we thought was appropriate valuation for all</p> <p>6 these assets.</p> <p>7 Q. And what were the reasons that you</p> <p>8 were conveying to Barclays that the asset values</p> <p>9 reflected on Exhibit 19 were too low?</p> <p>10 A. I can only give you the general</p> <p>11 answer, which is, in most cases, their deal team</p> <p>12 would have had a small amount of time. We might</p> <p>13 have had more transparency and more -- we would</p> <p>14 have had more transparency and more information</p> <p>15 with respect to details. Many of these</p> <p>16 securities were illiquid and pretty specific in</p> <p>17 terms of the characteristics of the securities.</p> <p>18 So I think it would have been the knowledge of</p> <p>19 the assets would have been part of what</p> <p>20 obviously we would have been making arguments</p> <p>21 about.</p> <p>22 We would also have argued that in many</p> <p>23 cases we had significant transparency in terms</p> <p>24 of transacting of because we had been in the</p> <p>25 business of selling assets over the course of</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 2008. In some cases these assets were very</p> <p>3 familiar to Barclays and their businesses. In</p> <p>4 some cases, some of these assets were businesses</p> <p>5 that they were less-market-share significant in,</p> <p>6 which is one of the reasons why they wanted to</p> <p>7 buy the U.S. businesses.</p> <p>8 Q. Well, of the \$5 billion difference</p> <p>9 that you have described, how much was Lehman</p> <p>10 saying was the appropriate difference for these</p> <p>11 assets that are reflected on Exhibit 19?</p> <p>12 A. We went through a process, a</p> <p>13 collective process, you know, between the two</p> <p>14 organizations and between all the risk</p> <p>15 operators. So we obviously came to a conclusion</p> <p>16 at the end of that process in terms of what we</p> <p>17 viewed to be fair in terms of transacting.</p> <p>18 I don't have the context. I wasn't</p> <p>19 sitting in the room for any of the beginning of</p> <p>20 the dialogue to be able to give you any</p> <p>21 specifics, where it started, where it ended,</p> <p>22 none of that, unfortunately, I can't give you.</p> <p>23 Q. Well, did you ever discuss with anyone</p> <p>24 at Lehman that the assets should be valued at</p> <p>25 the last time they had been marked by Lehman?</p>

Page 258

1 HIGHLY CONFIDENTIAL - B. McDADE
2 A. I would never make that statement
3 because the markets had dramatically moved from
4 Friday until when we were doing the transaction.

5 Q. So is it your testimony that nobody at
6 Lehman said that the value attributed to the
7 assets that would be part of the APA should be
8 valued at the amounts that they appeared on
9 Lehman's books?

10 A. All of the operators involved in the
11 transaction were working on -- we hadn't marked
12 since Friday. We weren't focused on the mark
13 process. We were focused on the transacting
14 process and the valuation process and an
15 education process to the buyer to make sure we
16 could effect the best possible sale. The --

17 Q. I just want to -- sorry.

18 A. The individual risk operators were not
19 focused on the Friday mark because the Friday
20 mark didn't reflect any relevance to what had
21 happened in the market or to an actual
22 transaction.

23 Q. Let me just make sure the record is
24 clear. You don't have any memory of anyone at
25 Lehman taking the position during negotiations

Page 259

1 HIGHLY CONFIDENTIAL - B. McDADE
2 that the asset value should be, that when we're
3 coming up with a transaction that's in the APA,
4 should be the way they were valued on Lehman's
5 books?

6 A. No, I -- we take very seriously the
7 marking responsibility as -- we took very
8 seriously as an organization all the way down to
9 the individual operators. So clearly there was
10 an understanding somewhere within finance and
11 intuitively at the trader level, but not
12 specifically in aggregate, because these were
13 individual traders and senior traders working
14 this process up.

15 So certainly, to answer your question,
16 there would have been responsible understanding
17 of where we were marked to where this
18 transaction was, but all relative to what had
19 happened vis-a-vis the markets between Friday
20 night and Tuesday.

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Page 260

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15 Q. Of the people who negotiated this deal
16 was there anyone who did not spend any time in
17 the employment of Barclays?

18 A. I don't have a specific list of who
19 all was involved with us over the course of the
20 week or who ultimately has gone to Barclays, so
21 I can't answer the specific question.

22 Q. Sitting here today, do you -- can you
23 remember anyone who was part of what you
24 consider the negotiating deal team who never
25 spent any time at Barclays?

Page 261

1 HIGHLY CONFIDENTIAL - B. McDADE

2 A. No.

3 Q. You mentioned earlier today that you
4 had a conversation with Bob Diamond on the
5 morning of the 16th where you talked about
6 employment and you said that you stopped him and
7 you left that meeting and you went to talk to
8 your lawyer.

9 What exactly did Bob Diamond say
10 before you stopped him?

11 A. He started a process of asking if I
12 would -- if I wanted to be part of Barclays, and
13 I stopped him.

14 Q. Anything else?

15 A. No.

16 Q. Who did make the presentation to the
17 board about this transaction?

18 A. I don't know.

19 Q. Does the board involve anyone who was
20 also involved in the negotiations?

21 A. I don't know the process that went at
22 the board. Do you mean the constituent of who
23 the board is?

24 Q. Yes, is there any overlap between the
25 constituents of who the board is and any

Page 262	Page 263
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 negotiators that were part of the deal?</p> <p>3 A. An informed person in the process was</p> <p>4 Dick Fuld, but he was not a negotiator sitting</p> <p>5 on the 32nd floor in the deal room.</p> <p>6 Q. Anybody else?</p> <p>7 A. No one else. He was the only employee</p> <p>8 of Lehman on the board.</p> <p>9 Q. After LBHI declared bankruptcies, so</p> <p>10 from September 15 on, was this deal shopped to</p> <p>11 anybody other than Barclays?</p> <p>12 MR. BUCKLEY: Objection to the form of</p> <p>13 the question.</p> <p>14 A. The Lehman Brothers platform had been</p> <p>15 aggressively shopped from the moment I became</p> <p>16 president in early June up unto this</p> <p>17 transaction. So the week of, to answer</p> <p>18 specifically your question, the week of 15th</p> <p>19 through 19th, everyone knew the opportunity. No</p> <p>20 one came forward.</p> <p>21 Q. Do you know of any specific efforts</p> <p>22 following the morning of September 15 to shop or</p> <p>23 advertise any sale of any part of Lehman to</p> <p>24 anyone other than Barclays?</p> <p>25 A. I do not.</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Did you ever meet with anyone from the</p> <p>3 Creditors Committee to discuss this deal?</p> <p>4 A. I never met with the Creditors</p> <p>5 Committee. Representatives of Lehman, including</p> <p>6 Jim Seery -- I know for a fact Jim Seery did,</p> <p>7 but I did not.</p> <p>8 Q. Do you know anything about what was</p> <p>9 communicated to the Creditors Committee about</p> <p>10 this transaction?</p> <p>11 A. No, I'm sorry, I do not.</p> <p>12 Q. You also testified earlier today about</p> <p>13 how JPMorgan had custody of assets that it did</p> <p>14 not provide and it did not transfer all of the</p> <p>15 assets that were under the Fed repo.</p> <p>16 What do you know about why they didn't</p> <p>17 do that?</p> <p>18 A. The commercial dispute was between</p> <p>19 Barclays and JPMorgan. I know nothing other</p> <p>20 than it became a dispute which caused more</p> <p>21 issues in terms of DTC, et cetera.</p> <p>22 Q. Did you ever speak to anyone at</p> <p>23 JPMorgan about it?</p> <p>24 A. I was involved on Sunday at the</p> <p>25 offices of Weil, in extremely large, dozens and</p>
Page 264	Page 265
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 dozens of folks, of which JPMorgan</p> <p>3 representatives were there and I was there, to</p> <p>4 try to begin -- and regulators, Fed, S.E.C.,</p> <p>5 SIPC, et cetera, et cetera -- to begin the</p> <p>6 process of trying to create a solution. But did</p> <p>7 I speak individually? No.</p> <p>8 Q. At that time, what did JPMorgan say</p> <p>9 about their position on whether they should be</p> <p>10 transferring additional assets to Barclays?</p> <p>11 A. In the public setting, if you will,</p> <p>12 where we or I was exposed to, they just had a</p> <p>13 simple party line that they viewed they had the</p> <p>14 right to collateral given their collective set</p> <p>15 of exposures to Lehman as the clearing bank, in</p> <p>16 particular.</p> <p>17 Q. Did you have a position whether</p> <p>18 that -- whether JPMC had the right to the</p> <p>19 collateral or not?</p> <p>20 A. Lehman had been struggling with JPM</p> <p>21 over a period of weeks prior to, you know,</p> <p>22 this -- the bankruptcy and this particular</p> <p>23 transaction. So I have seen some of what</p> <p>24 JPMorgan had been doing specifically to Lehman</p> <p>25 in terms of trying to secure, you know, its</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 credit position.</p> <p>3 Q. Did you have an opinion about whether</p> <p>4 JPMC was justified in its actions?</p> <p>5 A. That would be a question most</p> <p>6 specifically better asked to the financing</p> <p>7 individuals, but the extreme process by which</p> <p>8 they were claiming and gathering our collateral</p> <p>9 is I think at this point reasonably</p> <p>10 well-documented. It was aggressive would be my</p> <p>11 opinion.</p> <p>12 Q. Do you know anything about assets that</p> <p>13 are referred to as racers, R-A-C-E-R-S?</p> <p>14 A. The trust certificate, yes.</p> <p>15 Q. Do you know if any of the racers</p> <p>16 assets were transferred to Barclays?</p> <p>17 A. I don't know specifically, but I</p> <p>18 believe the answer is yes.</p> <p>19 Q. Who did you discuss the issue of the</p> <p>20 racers in context of this transaction with?</p> <p>21 A. I didn't discuss racers with any</p> <p>22 individual. I know that racers is a common</p> <p>23 financing trust vehicle that we had used over a</p> <p>24 period of time for certain of our asset classes</p> <p>25 to use to gain much more efficiency in terms of</p>

Page 266

1 HIGHLY CONFIDENTIAL - B. McDADE
2 the repo market.
3 Q. I'd like to turn your attention to
4 that handwritten page that we talked about right
5 before the break that was some notations about
6 the parts of the deal that you recall, and I
7 think you told Mr. Gaffey that what you thought
8 that Barclays received as part of the repo you
9 attributed to 45, and then you also said that
10 the cash given related to the repo was also 45
11 billion.
12 First of all, did I understand that
13 testimony right?
14 A. Uh-huh.
15 Q. So is it your understanding that
16 Barclays received exactly the amount of
17 collateral that it gave in cash, those were
18 exactly equal?
19 A. What I would describe is if Barclays
20 had unwound the repo with Lehman, so there was
21 actually no repo transaction, the transaction
22 that ultimately happened would have been the
23 same transaction. So we would have received
24 back the haircut, we would have gone through a
25 process of valuing the assets, and those -- that

Page 268

1 HIGHLY CONFIDENTIAL - B. McDADE
2 haircut was, and I've testified I don't know the
3 specific number, but whatever that haircut was
4 and then the value of the assets is the same
5 number.
6 Q. I'm sorry, tell me what the two
7 numbers are that you think are the same number.
8 A. If Lehman had taken back the repo
9 transaction. So we had our securities and we
10 had our cash and Barclays had effected the same
11 transaction with us, they would have valued our
12 cash at par, presumably, and they would have
13 valued the securities the same -- the total of
14 the two would have added up to the same price.
15 So to me it's moot what the haircut
16 was. We would have added back in terms of the
17 total value proposition.
18 Q. In terms of what actually happened, do
19 you know what the value was of the securities
20 that were transferred as part of the repo?
21 A. The deal team went through that
22 process. I was not part of that specifically.
23 Q. Do you know whether the amount of
24 assets and collateral that Barclays received as
25 part of the repo was more or less than \$45

Page 267

1 HIGHLY CONFIDENTIAL - B. McDADE
2 process would have come with the same outcome in
3 terms of the price.
4 So, to me, the repo is actually
5 secondary to actually what transpired because
6 ultimately we just kept valuing the assets,
7 whether it was the haircut in the original
8 construct, there was no additional haircut taken
9 in terms of the process, and the haircut,
10 whether it was Lehman and Lehman's cash back,
11 would have been valued at par. It was
12 ultimately a process around the assets
13 themselves in terms of how we valued them.
14 Q. I guess you said normally you would --
15 it was your understanding that Lehman would have
16 received back a haircut.
17 Did Lehman receive back the haircut in
18 collateral?
19 A. No, we did not receive back a haircut
20 in collateral.
21 Q. Barclays took the entire amount of or
22 value of collateral that had been pledged to the
23 Fed, right?
24 A. Because the ultimate package of cash a
25 hundred cents on the dollar, whatever that

Page 269

1 HIGHLY CONFIDENTIAL - B. McDADE
2 billion?
3 A. I never saw the specific document in
4 terms of the final process, but I am confident
5 that our team went through a process, both the
6 risk and the components of the operational
7 aspect of the repo, I'm confident that that was
8 the outcome.
9 Q. Do you know -- I guess I have to ask
10 it again. I'm sorry if I misunderstood. Do you
11 know one way or another whether the assets, the
12 value of the assets that Barclays received when
13 they took over the repo was more or less than
14 \$45 billion?
15 A. The value of the assets was the value
16 of the assets that we had determined together in
17 terms of the process. It would not have been
18 more than 45 billion.
19 Q. Why do you say it would not have been
20 more than 45 billion?
21 A. Barclays had a different view of the
22 value of the assets.
23 Q. Do you know whether Lehman had a view
24 that the value of the assets that were given to
25 Barclays was more --

Page 270	Page 271
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. The ultimate conclusion was the</p> <p>3 collection of the two views.</p> <p>4 Q. What was Lehman's view of the value of</p> <p>5 the assets that were transferred to Barclays as</p> <p>6 part of the Barclays taking over the Fed repo?</p> <p>7 A. I wasn't part of the specific process</p> <p>8 in terms of that valuation, so I can't give you</p> <p>9 that answer.</p> <p>10 Q. So you don't know whether Lehman</p> <p>11 believed that the value of the assets that went</p> <p>12 to Barclays as part of the Fed repo was more</p> <p>13 than \$45 billion?</p> <p>14 A. No, I believe that the deal teams went</p> <p>15 through the process and concluded that it was</p> <p>16 \$45 billion.</p> <p>17 Q. But I thought that that process was</p> <p>18 because Lehman had a view and Barclays had a</p> <p>19 view and it's your understanding that the view</p> <p>20 together would have been \$45 billion, right?</p> <p>21 A. Right.</p> <p>22 Q. I want to know if you know what</p> <p>23 Lehman's view of what the asset value was.</p> <p>24 A. I do not know.</p> <p>25 MS. TAGGART: That's all my questions.</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Thank you.</p> <p>3 EXAMINATION BY</p> <p>4 MR. MAGUIRE:</p> <p>5 Q. Sir, my name is Bill Maguire from</p> <p>6 Hughes, Hubbard & Reed. Sir, Hughes Hubbard is</p> <p>7 counsel to the trustee for the Estate of Lehman</p> <p>8 Brothers, Inc.</p> <p>9 I'll start by showing you a document</p> <p>10 that's previously been marked as Exhibit 219.</p> <p>11 Do you recognize the e-mail, sir?</p> <p>12 A. Yes, I do.</p> <p>13 Q. You'll see in this e-mail Mr. Lowitt</p> <p>14 indicates that -- he refers to the 15c3 lockup</p> <p>15 as 1.3 billion. You see that?</p> <p>16 A. Yes.</p> <p>17 Q. And he goes on to say, "So we are</p> <p>18 short 1.7 billion." And taking those two</p> <p>19 numbers, it sounds as though the 15c3 seems to</p> <p>20 leave him short, or he seems to be suggesting to</p> <p>21 you that that leaves you short by 1.7 billion,</p> <p>22 which seems to suggest that he's shooting for an</p> <p>23 overall target of around 3 billion.</p> <p>24 Do you understand how Mr. Lowitt got</p> <p>25 that understanding?</p>
Page 272	Page 273
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Again, I have attempted to answer that</p> <p>3 question. I don't remember a specific target.</p> <p>4 Mr. Lowitt would have been with Mr. Kirk at that</p> <p>5 time. I believe the time of this would have</p> <p>6 been when I was in the courtroom.</p> <p>7 So, specifically, they're work with</p> <p>8 the live data in terms of the full valuation</p> <p>9 process, which is how we probably got to that</p> <p>10 figure.</p> <p>11 Q. Do you recall hearing from Barclays</p> <p>12 any specific number or target that they wanted?</p> <p>13 A. A number or target?</p> <p>14 Q. Yes.</p> <p>15 A. Specifically me, no.</p> <p>16 Q. At the time of this, you had gone to</p> <p>17 court? You were actually in the hearing?</p> <p>18 A. I'm not good on GMT time. Is this</p> <p>19 2:30 in the afternoon?</p> <p>20 Q. Let me leave the exhibit aside. I</p> <p>21 just wanted to really direct your attention to</p> <p>22 the hearing.</p> <p>23 A. Yes.</p> <p>24 Q. You mentioned there's a session at the</p> <p>25 court, there's a period where the masses are</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 told about changes to the deal?</p> <p>3 A. Uh-huh.</p> <p>4 Q. In the course of that discussion, do</p> <p>5 you recall anything that was told to the masses</p> <p>6 about the 15c3 assets?</p> <p>7 A. No, I was -- it was a large gathering</p> <p>8 around Mr. Miller in a live setting without</p> <p>9 microphones, so I wasn't part of the actual</p> <p>10 conversation. So the senior lawyers were</p> <p>11 gathered in the middle of the courtroom.</p> <p>12 Q. And when you say you weren't part of</p> <p>13 the conversation, were you able to hear the</p> <p>14 conversation?</p> <p>15 A. No, that's what I mean. I was not</p> <p>16 able to hear the conversation. There was no</p> <p>17 microphone. He was not in a position with a</p> <p>18 microphone in any public setting. It was a</p> <p>19 public setting where, unless you were crowded</p> <p>20 around the ring, you couldn't hear.</p> <p>21 Q. I see. So there was a meeting where</p> <p>22 information was given to the masses, but you</p> <p>23 needed to be specifically within the tight</p> <p>24 immediate ring in order to actually hear what</p> <p>25 was being said?</p>

<p style="text-align: right;">Page 274</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Correct.</p> <p>3 Q. And you did not hear what was said?</p> <p>4 A. Yes, sir.</p> <p>5 Q. When you say "yes, sir"?</p> <p>6 A. Yes, sir, I did not hear.</p> <p>7 Q. You had looked a number of times today</p> <p>8 at the September 16 balance sheet, Exhibit 19,</p> <p>9 and that includes on each side, the assets and</p> <p>10 the liabilities, a reference to derivatives.</p> <p>11 See that, 4 and a half billion on the asset side</p> <p>12 and 4 and a half billion on the liability side?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Am I correct that on the asset side</p> <p>15 that represents long positions?</p> <p>16 A. Yes.</p> <p>17 Q. And on the liability side that</p> <p>18 represents short positions?</p> <p>19 A. Yes.</p> <p>20 Q. And those are positions in derivatives</p> <p>21 that are -- that LBI had?</p> <p>22 A. Yes, exchange-traded.</p> <p>23 Q. The exchange-traded, do those include</p> <p>24 derivatives that were traded on the Options</p> <p>25 Clearing Corporation, or OCC?</p>	<p style="text-align: right;">Page 275</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Yes.</p> <p>3 Q. Did you understand that, in addition</p> <p>4 to the long positions and the short positions</p> <p>5 that Lehman had at OCC, it also had additional</p> <p>6 cash and assets that were deposited as margin</p> <p>7 and also clearing funds deposited at the OCC?</p> <p>8 A. Yes, I did, but keep in mind the</p> <p>9 context that we had had assets like that, for</p> <p>10 example, at the CME, and they lost those assets</p> <p>11 over the course of the week. So we had no</p> <p>12 confidence that those were potentially our</p> <p>13 assets given what had been transpiring.</p> <p>14 Q. Did anyone tell you that you -- that</p> <p>15 Lehman had an excess of those assets at OCC?</p> <p>16 A. Not specifically, no.</p> <p>17 Q. Do you recall whether at any time</p> <p>18 anyone told you that Lehman had an excess of</p> <p>19 \$1.3 billion of cash deposited at the OCC?</p> <p>20 A. No one told me that specifically, no.</p> <p>21 Q. Did anyone tell you that Lehman had an</p> <p>22 excess of \$900 million in additional assets</p> <p>23 beyond the cash deposited at the OCC?</p> <p>24 A. No one told me that.</p> <p>25 Q. Did you ever have any discussion with</p>
<p style="text-align: right;">Page 276</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Barclays about Barclays acquiring the \$2.2</p> <p>3 billion of excess cash and assets margin at OCC?</p> <p>4 MR. HUME: Objection. Lacks</p> <p>5 foundation.</p> <p>6 A. I specifically did not.</p> <p>7 Q. Are you aware whether Barclays ever</p> <p>8 asked anyone at Lehman to include any of those</p> <p>9 assets in the sale?</p> <p>10 A. I'm not specifically aware of any</p> <p>11 specific dialogue with respect to those options,</p> <p>12 the collateral, BarCap and Lehman.</p> <p>13 Q. And to your knowledge, was there ever</p> <p>14 any intent on the part of Lehman to transfer any</p> <p>15 of those excess cash, that 1.3 billion or any</p> <p>16 additional assets, that was clearing in margin</p> <p>17 at OCC to Barclays as part of the sale?</p> <p>18 A. My recollection is the original</p> <p>19 contemplation of those positions would have</p> <p>20 been, to your point, the actual positions</p> <p>21 themselves. Collateral would have been a</p> <p>22 secondary consideration. We were concerned</p> <p>23 about our collateral positions.</p> <p>24 However, I think over the course of</p> <p>25 the week, that became -- that became, to my</p>	<p style="text-align: right;">Page 277</p> <p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 recollection, over the course of time, that</p> <p>3 became something that ended up, I believe, in</p> <p>4 the clarifying document.</p> <p>5 Q. Did anyone tell you that the, under</p> <p>6 the clarifying document, there had been some</p> <p>7 agreement where Barclays to transfer to Barclays</p> <p>8 an additional \$2.2 billion of cash and</p> <p>9 securities representing margin, excess margin</p> <p>10 and other assets at OCC?</p> <p>11 A. No.</p> <p>12 MR. HUME: Objection. Vague and</p> <p>13 ambiguous. Lacks foundation.</p> <p>14 Q. To your knowledge, was there ever any</p> <p>15 intent on the part of Lehman that the clarifying</p> <p>16 letter would provide Barclays an additional \$2.2</p> <p>17 billion in margin at OCC?</p> <p>18 A. No.</p> <p>19 Q. What about margin, additional margin</p> <p>20 that Lehman had at any other clearing</p> <p>21 corporations, and I want to specifically include</p> <p>22 any foreign clearing corporations, counterparts</p> <p>23 to the OCC, were you aware, was there ever any</p> <p>24 negotiations or intent on the part of Lehman to</p> <p>25 transfer any such margin, cash or additional</p>

Page 278

1 HIGHLY CONFIDENTIAL - B. McDADE
2 assets, at foreign clearing corporations to
3 Barclays?
4 A. I'm not aware of those.
5 Q. Were you involved, sir, with any
6 discussions with the Depository Trust
7 Corporation, DTC?
8 A. Specifically, no.
9 Q. Were you aware of any concerns at DTC
10 concerning Lehman's business?
11 A. Yes, absolutely.
12 Q. What were the nature of the concerns
13 that you heard about that were experienced by
14 DTC?
15 A. We obviously had a number of
16 settlements normal course of business, and DTC
17 had become concerned because JPMorgan apparently
18 was backing -- was backing away in terms of its
19 role with us, and DTC essentially told us they
20 were going to shut down our ability to not only
21 transact going forward, but to shut down
22 hundreds of thousands of settlements that were
23 in process.
24 Q. And how did that threaten the deal
25 with Barclays?

Page 280

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. And DTC's concern was as to its
3 exposure --
4 A. Exactly.
5 Q. -- in clearing those trades?
6 A. Exactly.
7 Q. And it wanted Barclays to assume
8 responsibility for that exposure?
9 A. Exactly. It wanted a letter of credit
10 and it wanted posted collateral, et cetera.
11 Q. And Barclays did offer some limited
12 guarantee?
13 A. My understanding is Barclays offered
14 250 million.
15 Q. And DTC wanted an unlimited guarantee?
16 A. That's correct.
17 Q. Were you involved in any discussions
18 concerning the pledging of certain residential
19 mortgage assets to DTC in connection with its
20 concerns?
21 A. Only at a very -- I have vague
22 recollection of the process, but I was not
23 involved specifically, no.
24 Q. What do you recall about it?
25 A. We were trying to find at that point

Page 279

1 HIGHLY CONFIDENTIAL - B. McDADE
2 A. Well, it was the position of -- it was
3 the position of Barclays that they didn't want
4 to assume all of those liabilities, and it was
5 the position of the other protagonists,
6 regulators and others -- again, this is my
7 opinion -- that Barclays should be more
8 forthcoming in terms of assuming some of those
9 responsibilities. And it was also -- there was
10 also the confusion of the dispute between
11 JPMorgan and Barclays that clearly created --
12 created headache.
13 So how it was going to stop the deal,
14 it would have become an enormous challenge for
15 Barclays to buy a set of businesses where all of
16 the normal course transacting over the course of
17 the last couple weeks of the core constituent
18 clients, it would have been a massive brand and
19 reputational challenge, I believe, for a new
20 buyer, practically speaking, I think.
21 Q. The uncleared trades were in the many
22 billions of dollars; is that correct?
23 A. I don't have the exact figure, but I
24 know they were in the hundreds of thousands of
25 individual transactions.

Page 281

1 HIGHLY CONFIDENTIAL - B. McDADE
2 in time an ability for Lehman to solve some of
3 these issues back to the -- at some point during
4 the week we had an understanding we still might
5 have some -- any asset that we had we were using
6 to try to figure out how to solve individual
7 problems, that being one of them. That's the
8 extent of my recollection.
9 Q. Did you learn that DTC had specific
10 concerns about Lehman transferring assets,
11 unencumbered assets at DTC to Barclays as part
12 of the sale, and specifically the concern that
13 that would deprive DTC of collateral that it was
14 looking to as a line of defense against its
15 exposure to Lehman?
16 A. I was not part of those discussions.
17 I did not learn that, no.
18 Q. Did you learn that there was an
19 agreement including not only Lehman, but also
20 DTC and Barclays that was worked out over the
21 weekend?
22 A. It's in the -- I believe it's in the
23 clarifying letter. In terms of the posting of
24 250 million of posted collateral?
25 Q. Yes. Did you understand there was a

Page 282	Page 283
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 separate agreement with DTC?</p> <p>3 A. Again, we were -- we -- only after the</p> <p>4 fact because we were not allowed in the room in</p> <p>5 terms of the process.</p> <p>6 Q. So you did not have an understanding</p> <p>7 of what the terms of that were, other than</p> <p>8 obviously there was a \$250 million guarantee?</p> <p>9 A. Right. Correct.</p> <p>10 Q. We have the clarifying letter marked</p> <p>11 as an exhibit. I believe it's Exhibit 25. If</p> <p>12 you turn, sir, to page 4, there's a paragraph 8</p> <p>13 there which concerns transfer of customer</p> <p>14 accounts. If you take a moment to look at that.</p> <p>15 I'm going to ask you about the part that begins</p> <p>16 little "ii".</p> <p>17 A. Uh-huh.</p> <p>18 Q. This refers to the 15c3 assets, and</p> <p>19 you understand the 15c3 was a lockup or</p> <p>20 protective customer account?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Did you understand that there were</p> <p>23 regulatory issues about whether assets could be</p> <p>24 removed from that account?</p> <p>25 A. Most definitely.</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 Q. Did you understand that the promise by</p> <p>3 Lehman to pay assets, 15c3 assets, required</p> <p>4 regulatory approval?</p> <p>5 A. Yes.</p> <p>6 Q. And did Barclays understand that the</p> <p>7 transfer was conditioned on obtaining that</p> <p>8 regulatory approval?</p> <p>9 MR. HUME: Objection. Lacks</p> <p>10 foundation.</p> <p>11 A. I was not part of the individual</p> <p>12 discussions with the regulator, the BarCap and</p> <p>13 Lehman team together, but I do know that BarCap</p> <p>14 was very interested in learning whether this</p> <p>15 could be an asset that could be part of the</p> <p>16 transaction in order to facilitate a deal being</p> <p>17 done, and I do know that they spent a lot of</p> <p>18 time -- their experts spent a lot of time with</p> <p>19 the team from Lehman and the team from the</p> <p>20 S.E.C. and I assume other regulators working</p> <p>21 through the process.</p> <p>22 I don't know the conclusion in terms</p> <p>23 of their comfort level with that or the --</p> <p>24 presumably they got some sense of comfort taking</p> <p>25 it on as an asset in the transaction, but that's</p>
Page 284	Page 285
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 all I know.</p> <p>3 Q. And your understanding is that Lehman</p> <p>4 was open and transparent with Barclays in giving</p> <p>5 them whatever information was available so they</p> <p>6 could assess, I guess, whatever level of comfort</p> <p>7 they could as to what the excess in the account</p> <p>8 was?</p> <p>9 MR. HUME: Objection. Lacks</p> <p>10 foundation.</p> <p>11 A. Yes, Lehman -- this was a brand-new</p> <p>12 concept for all of us in terms of the notion. I</p> <p>13 didn't know what 15c3 was, you know, walking</p> <p>14 into the week of September 15th, as did -- as</p> <p>15 probably did some of our other front-end risk</p> <p>16 operators, but clearly our financing and</p> <p>17 regulatory folks did.</p> <p>18 It's my understanding that our</p> <p>19 communication with Barclays over the course of</p> <p>20 the week would have led Barclays to a level of</p> <p>21 uncertainty in whether or not -- how much and</p> <p>22 whether or not this could be doable, yes,</p> <p>23 because there were lots of -- there was a lot of</p> <p>24 dynamics in terms of the fact that Lehman was</p> <p>25 providing to Barclays because of the unchartered</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 nature of what we were contemplating.</p> <p>3 Q. Was there ever any discussion between</p> <p>4 Lehman and Barclays in which Lehman undertook to</p> <p>5 provide the 700 plus million dollars to Barclays</p> <p>6 unconditionally, regardless of whether there was</p> <p>7 regulatory approval or regardless of the extent</p> <p>8 to which it was permitted by law to remove 760</p> <p>9 million or anything from a lockup account?</p> <p>10 A. No, not to my recollection.</p> <p>11 Q. That term never became unconditional</p> <p>12 as far as you're aware?</p> <p>13 A. As far as I'm aware, no.</p> <p>14 MR. MAGUIRE: Thank you, sir. That's</p> <p>15 all I have.</p> <p>16 THE WITNESS: Thank you very much.</p> <p>17 MR. HUME: I may have a few questions.</p> <p>18 I would like a short break to review my</p> <p>19 notes.</p> <p>20 (Recess; Time Noted: 4:17 P.M.)</p> <p>21 (Time Noted: 4:29 P.M.)</p> <p>22 EXAMINATION BY</p> <p>23 MR. HUME:</p> <p>24 Q. Mr. McDade, thanks. I'm Hamish Hume.</p> <p>25 We met earlier today. I'm represent Barclays</p>

Page 286

1 HIGHLY CONFIDENTIAL - B. McDADE
2 from Boies, Schiller & Flexner.
3 Just a couple of questions. Earlier
4 in the day you were asked about the estimated
5 liability of \$2 billion for compensation, do you
6 remember that?
7 A. Yes, I do.
8 Q. And you were asked about its
9 relationship to the Lehman accrual, do you
10 remember that?
11 A. Yes, I do.
12 Q. Am I correct that Lehman would
13 accrue -- let me withdraw that. Am I correct
14 that Lehman would pay bonuses to its employees
15 through a mix of cash and equity?
16 A. Yes, you're correct.
17 Q. Am I correct that Lehman paid a
18 significant portion of its bonuses in equity?
19 A. Yes, a very significant proportion.
20 Q. Above average for Wall Street?
21 A. Above average for Wall Street, and it
22 had changed in 2007 to a higher percentage of
23 equity.
24 Q. Am I correct that the accrual on
25 Lehman's books for bonuses reflected only the

Page 288

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. You were also asked questions about
3 the cure estimate. Do you remember that?
4 A. Yes, I do.
5 Q. You referenced, I think, in your
6 testimony an understanding that Barclays had 60
7 days under the agreement to determine which
8 contracts to assume or not?
9 A. Yes.
10 Q. Do you recall that?
11 A. Yes, I do.
12 Q. And we can look at the provision, but
13 it sounded like you remembered it. Was it clear
14 in your head, in your understanding that it was
15 Barclays' decision, in its sole discretion, as
16 to which contracts to assume and which not to
17 assume?
18 A. It's intuitive and it was very clear
19 from the outset, yes.
20 Q. And that process would happen only
21 after the closing, correct?
22 A. It couldn't happen before the closing,
23 right.
24 Q. And therefore, it was not possible
25 before the closing to have a definitive number

Page 287

1 HIGHLY CONFIDENTIAL - B. McDADE
2 cash component of the bonus?
3 MS. TAGGART: Objection to form.
4 MR. GAFFEY: Join.
5 A. That's correct.
6 Q. And so the accrual at Lehman was a
7 cash accrual -- was for the cash portion of the
8 bonus?
9 MS. TAGGART: Objection to form.
10 Foundation.
11 A. The 2008 accrual was the -- for
12 employees pay in 2008 was a cash accrual, and
13 then there was accrual for anything that might
14 have vested for previous awards over a period of
15 time.
16 Q. If you wanted to compensate -- if
17 Barclays wanted to compensate all of the
18 transferred employees in a manner commensurate
19 with what their 2008 compensation would
20 otherwise have been, would it be appropriate for
21 them to increase, to add some portion to the
22 cash accrual to reflect the equity that they
23 would have received?
24 MR. GAFFEY: Objection.
25 A. Yes, it would.

Page 289

1 HIGHLY CONFIDENTIAL - B. McDADE
2 for the cure payments Barclays would have to
3 pay?
4 MR. GAFFEY: Objection to form.
5 MS. TAGGART: Objection.
6 Q. Is that correct?
7 A. That is correct.
8 Q. Was it, therefore, in your mind always
9 just an estimate of what the cure payments might
10 be?
11 A. From my seat, I could not make a
12 determination what Barclays' management would do
13 with the contracts. The only determination I
14 could make was a list of the obligations that
15 were there. Barclays' management team would
16 make those decisions.
17 Q. You gave testimony earlier I think
18 during Ms. Taggart's questioning about how no
19 financial institution would mark to market the
20 assets on its books securities at the price at
21 which it could liquidate the entire portfolio.
22 Do you recall that?
23 A. Yes.
24 Q. I think you gave the example of a
25 mutual fund, for example, which marks to market,

Page 290	Page 291
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 would not mark to market at the value that it</p> <p>3 would sell the entire portfolio at once in a</p> <p>4 bulk sale?</p> <p>5 A. Correct.</p> <p>6 Q. Would you elaborate upon what you</p> <p>7 meant by that?</p> <p>8 A. I think it's -- the whole notion of</p> <p>9 marking assets that need to be marked in</p> <p>10 broker-dealer context around the world has been</p> <p>11 challenged by what's happened in the credit</p> <p>12 crisis, but it was our responsibility to mark on</p> <p>13 every given night to the best of our abilities</p> <p>14 and all the market inputs and all the individual</p> <p>15 operators' ability to transact a significant</p> <p>16 amount of those assets, but not in aggregate all</p> <p>17 of those assets. None of the individual</p> <p>18 collective balance sheets with the liquidity</p> <p>19 characteristics of the market particularly in</p> <p>20 2008 would allow for transactions of that</p> <p>21 significant a size.</p> <p>22 Q. Let me make sure I understand that.</p> <p>23 If Lehman Brothers were to look at its books,</p> <p>24 even assuming that everything had been perfectly</p> <p>25 marked to market as of a minute before they</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 looked at the books, and Lehman then had to</p> <p>3 decide that it was going to sell its entire</p> <p>4 portfolio or some significant portion of the</p> <p>5 portfolio, tens of billions of dollars, what</p> <p>6 would the relationship be in your mind between</p> <p>7 the price Lehman would be able to get for the</p> <p>8 sale of the entire portfolio versus those marks?</p> <p>9 MS. TAGGART: Objection.</p> <p>10 A. Obviously depends on the time of the</p> <p>11 day, the characteristics of the assets, but it</p> <p>12 would be lower.</p> <p>13 I would give an even simpler example.</p> <p>14 If I tried to transact in IBM stock and I can</p> <p>15 see on any self-directed ticker that the price</p> <p>16 is 101 to 101 and one cent, if I tried to</p> <p>17 transact a hundred shares, I'll get an</p> <p>18 execution. If I try to transact 10,000 shares</p> <p>19 of IBM, I won't get a 101 execution.</p> <p>20 Q. You will get a lower execution?</p> <p>21 A. I'll get a lower execution. So even</p> <p>22 in the, quote, most liquid forms of assets.</p> <p>23 Sorry.</p> <p>24 Q. And is that dynamic you just</p> <p>25 explained, that relationship in the market value</p>
Page 292	Page 293
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 of a sale of a bulk portfolio and the marks,</p> <p>3 does that -- is that relevant to understanding</p> <p>4 the negotiations of the price that were</p> <p>5 occurring between Lehman and Barclays?</p> <p>6 A. I think it's very relevant because</p> <p>7 Barclays was taking a large amount of risk given</p> <p>8 the size of the transaction relative to the</p> <p>9 liquidity characteristics of all of the marks.</p> <p>10 Barclays could easily have lost a significant</p> <p>11 amount of money purchasing these assets.</p> <p>12 Q. And is that because when you buy the</p> <p>13 long positions in a volatile market in a large</p> <p>14 bulk, you can't liquidate them immediately --</p> <p>15 A. That's correct.</p> <p>16 Q. -- at a set price? Instead, while you</p> <p>17 hold them, the price may drop?</p> <p>18 A. That's correct.</p> <p>19 Q. You testified also that there was an</p> <p>20 ongoing effort through the week to value the</p> <p>21 assets, the changing potential list of assets</p> <p>22 that would be in the deal, correct?</p> <p>23 A. Yes, that's correct.</p> <p>24 Q. And am I correct that there were --</p> <p>25 that the process of debating the values of the</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 bulk value of the assets, as you just described,</p> <p>3 there was back and forth between Barclays and</p> <p>4 Lehman?</p> <p>5 A. Yes, there was.</p> <p>6 Q. And was there room for reasonable</p> <p>7 disagreement about the value of those assets?</p> <p>8 A. I was not in the room, but, yes, it's</p> <p>9 my understanding, yes.</p> <p>10 Q. And is it relevant to that discussion</p> <p>11 of the value of the assets that it was happening</p> <p>12 in the context of a very difficult financial</p> <p>13 market?</p> <p>14 A. I think the backdrop of the markets is</p> <p>15 very relevant.</p> <p>16 Q. Do you believe there was some level of</p> <p>17 uncertainty, therefore, in what the absolute</p> <p>18 final asset values were, some level of</p> <p>19 uncertainty?</p> <p>20 A. I'm not sure I understand the</p> <p>21 specifics of your question.</p> <p>22 Q. Well, let me just ask it this way.</p> <p>23 You've testified through the day that there was</p> <p>24 a concept that the assets and liabilities should</p> <p>25 roughly balance, correct?</p>

Page 294	Page 295
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Correct.</p> <p>3 Q. But would you also agree that some</p> <p>4 portions of the liabilities were estimated</p> <p>5 liabilities, such as cure?</p> <p>6 A. That's correct.</p> <p>7 Q. And that the asset -- the components</p> <p>8 of assets that were being transferred changed</p> <p>9 during the week; is that correct?</p> <p>10 A. Yes, they did.</p> <p>11 Q. And the valuations of those assets</p> <p>12 changed during the week; is that correct?</p> <p>13 A. Yes, they did.</p> <p>14 Q. And there were debates over those</p> <p>15 valuations, yes?</p> <p>16 A. Yes, there was.</p> <p>17 Q. And so there was a clear deal over</p> <p>18 what assets were being transferred, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And there was a clear effort to value</p> <p>21 those assets?</p> <p>22 A. Yes, there was.</p> <p>23 Q. But there was also some uncertainty</p> <p>24 over precisely what the value of those assets</p> <p>25 would turn out to be?</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 A. Absolutely, yes. I understand, yes.</p> <p>3 Q. With respect to the exchanged-traded</p> <p>4 derivatives, was it your understanding that</p> <p>5 Barclays was taking over Lehman's settlement</p> <p>6 obligations with respect to all of the</p> <p>7 exchange-traded derivatives? Did you understand</p> <p>8 that?</p> <p>9 A. I wasn't involved in the specifics of</p> <p>10 the actual equity derivative trade, so it would</p> <p>11 be my understanding that the settlements, option</p> <p>12 positions and settlements are very important</p> <p>13 aspects of the risk characteristics. So, yes,</p> <p>14 the settlements, yes.</p> <p>15 Q. Is it your testimony that you don't</p> <p>16 recall one way or the other the specifics of the</p> <p>17 deal with respect to the exchange-traded</p> <p>18 derivatives?</p> <p>19 A. That's correct.</p> <p>20 Q. So you don't have a specific</p> <p>21 recollection, as I understand it, with respect</p> <p>22 to whether the collateral was or was not</p> <p>23 included?</p> <p>24 A. That's correct.</p> <p>25 MR. HUME: I don't have any more</p>
Page 296	Page 297
<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 questions.</p> <p>3 EXAMINATION BY</p> <p>4 MR. GAFFEY:</p> <p>5 Q. Just one or two. This concept</p> <p>6 Mr. Hume has asked you about where accounts are</p> <p>7 taken of financial institutions not maintaining</p> <p>8 the book value to contemplate a transaction of</p> <p>9 this size, is there a difference -- is there,</p> <p>10 when this extra consideration is brought into</p> <p>11 play of moving in that bulk, that's not the same</p> <p>12 thing as book value, right?</p> <p>13 MR. BUCKLEY: Objection.</p> <p>14 MR. HUME: Objection. Vague and</p> <p>15 ambiguous.</p> <p>16 A. The concept of a broker-dealer is</p> <p>17 market value every single night. So it's a</p> <p>18 debate about the market value, the criteria used</p> <p>19 in that process of creating the valuations for</p> <p>20 market value, and there's a difference between</p> <p>21 the price of buying seven, you know, seven loads</p> <p>22 of oil tankers and one, and same thing in</p> <p>23 securities.</p> <p>24 Q. So when the market value is determined</p> <p>25 every night, that is a market value determined</p>	<p>1 HIGHLY CONFIDENTIAL - B. McDADE</p> <p>2 by moving smaller blocks of the asset, not the</p> <p>3 whole thing?</p> <p>4 A. That's correct.</p> <p>5 Q. So the book value would not reflect</p> <p>6 that block discount?</p> <p>7 A. Book value of any financial</p> <p>8 institution would not reflect moving the entire</p> <p>9 book that next morning, that's correct.</p> <p>10 Q. So if the assets are described as the</p> <p>11 book value, that's a different concept than the</p> <p>12 valuation contemplating of a bulk transfer,</p> <p>13 correct?</p> <p>14 MR. HUME: Objection. Vague and</p> <p>15 ambiguous.</p> <p>16 A. Again, I'm not -- I'm not familiar</p> <p>17 with the term "book value." We used only</p> <p>18 "market value" at Lehman.</p> <p>19 Q. Well, the Asset Purchase Agreement</p> <p>20 used the term "book value," right?</p> <p>21 A. I remember we used the -- the papering</p> <p>22 of the transaction used the term "book value."</p> <p>23 I had not focused on that. I'm not sure who</p> <p>24 wrote this specifics, so I couldn't comment on</p> <p>25 the use of the term in that paragraph.</p>

Page 298

1 HIGHLY CONFIDENTIAL - B. McDADE
2 Q. You could comment on whether it's an
3 accurate description of the assets, though,
4 couldn't you?
5 A. It's an accurate description of the
6 Friday night -- I have gone through it -- the
7 Friday night, September 12, to the market value
8 process that we went through on September 16.
9 Q. And whether you're looking at it on
10 the 12th or on whatever day the book value was
11 determined, it does not include this additional
12 haircut for a bulk transfer?
13 A. For any financial institution, that's
14 correct.
15 Q. Now, you have spoken a bit today about
16 Barclays purchasing the business, although we've
17 been talking about an asset transfer. The idea
18 was Barclays would take in the franchise, the
19 people, the inventory, and have a running
20 business; is that right?
21 A. Absolutely.
22 Q. Okay. And so, and in that concept,
23 Barclays would on day one, after the
24 transaction, be as close an approximation as it
25 could be of what Lehman had been in terms of

Page 300

1 HIGHLY CONFIDENTIAL - B. McDADE
2 employee population, yes?
3 A. Yes.
4 Q. And taking over the buildings, yes?
5 A. Yes.
6 Q. And taking over the systems and the
7 hard assets necessary to run the business, yes?
8 A. Yes, that's correct.
9 Q. And the inventory of securities that
10 were necessary to operate the business, yes?
11 A. No, the point that I was trying to
12 make just a minute ago is the goal of
13 Mr. Diamond and BarCap was to buy the
14 businesses. They understood the responsibility
15 around the assets. If they had their druthers,
16 I'm sure they would have not wanted to go
17 through the asset part of the process because
18 buying the business would have been far simpler
19 in terms of process given the market conditions
20 at that moment in time.
21 Q. So they would have bought the business
22 without any inventory would have been their
23 preference, am I understanding that correctly?
24 A. If you could buy a world-class client
25 franchise with no risk attached to the

Page 299

1 HIGHLY CONFIDENTIAL - B. McDADE
2 people and inventory and businesses, correct?
3 A. Correct. Even more so with the
4 integration of their -- their infrastructure
5 that they had already built up.
6 Q. Into the Lehman infrastructure they
7 took in?
8 A. Yes.
9 Q. And when those infrastructures were
10 combined and Barclays had now a substantial
11 broker-dealer presence in the United States,
12 that's not a transaction that contemplates
13 moving the bulk of inventory out the next day,
14 is it? It's a -- that's the inventory for the
15 business to be run?
16 A. I can't comment about how Barclays,
17 you know, was thinking about or working through
18 the assets. They were buying the assets as part
19 of the combination to buy the businesses.
20 Q. Okay. Well, a lot of attention was
21 spent on the eight critical employees, yes?
22 A. Absolutely.
23 Q. And the top 200, yes?
24 A. Yes.
25 Q. And a percentage of the rest of the

Page 301

1 HIGHLY CONFIDENTIAL - B. McDADE
2 transaction, you would prefer to do that
3 transaction.
4 Q. Did anything anybody from Barclays
5 said to you at all during the week indicate that
6 it was their intention to take the inventory and
7 move it out in a bulk trade shortly after the
8 transaction closed?
9 A. I have no information in terms of,
10 during that week or anytime after, in terms of
11 what Barclays' intent was with the assets.
12 Q. My question is a little broader than
13 that. Did anything anybody said to you during
14 that week indicate to you that that might have
15 been Barclays plan?
16 (Continued on the next page to include
17 the jurat.)
18
19
20
21
22
23
24
25

Page 302

HIGHLY CONFIDENTIAL - B. McDADE
A. Nobody said to that to me.
MR. GAFFEY: Thanks. I have nothing
further. Thank you for your time again.
THE WITNESS: Thank you.
(Time Noted: 4:45 P.M.)
oOo

BART McDADE

Subscribed and sworn to
before me this day
of 2009.

Page 303

HIGHLY CONFIDENTIAL - B. McDADE
CERTIFICATE
STATE OF NEW YORK)

: ss
COUNTY OF NEW YORK)
I, Kathy S. Klepfer, a Registered
Merit Reporter and Notary Public within and
for the State of New York, do hereby
certify:

That BART McDADE, the witness whose
deposition is herein before set forth, was
duly sworn by me and that such deposition is
a true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage and that I am in no way
interested in the outcome of this matter.

I further certify that neither the
deponent nor a party requested a review of
the transcript pursuant to Federal Rule of
Civil Procedure 30(e) before the deposition
was completed.

In witness whereof, I have hereunto
set my hand this 2nd day of September, 2009.

Page 304

HIGHLY CONFIDENTIAL - B. McDADE
INDEX
WITNESS: EXAMINATION BY PAGE
B. McDADE Mr. Gaffey 5, 296
Ms. Taggart 232
Mr. Maguire 271
Mr. Hume 285

EXHIBITS: PAGE
Exhibit 335, a document bearing Bates 196
Nos. BCI-EX-(S)-50261
Exhibit 336, handwritten calculation 205

Page 305

HIGHLY CONFIDENTIAL - B. McDADE
NAME OF CASE: In re Lehman Brothers
DATE OF DEPOSITION: September 2, 2009
NAME OF WITNESS: Bart McDade
Reason Codes

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

Page _____ Line _____ Reason _____
From _____ to _____

BART McDADE